

MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987

HEARINGS

BEFORE THE

COMMITTEE ON SMALL BUSINESS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1993

THE MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF
1987

AND

H.R. 1807

THE CAPITAL OWNERSHIP DEVELOPMENT REFORM ACT OF 1987

FEBRUARY 2, 18, AND 25, 1988



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**S. 1993, THE MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987 AND
H.R. 1807, THE CAPITAL OWNERSHIP DEVELOPMENT REFORM ACT OF 1987**

TUESDAY, FEBRUARY 2, 1988

**U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.**

The Committee met, pursuant to notice, at 10:05 a.m. in room 428A, Russell Senate Office Building, Hon. Dale Bumpers (Chairman of the Committee) presiding.

**STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM
THE STATE OF ARKANSAS**

The CHAIRMAN. The Committee will come to order. This morning the Committee will hold the first of a series of hearings on legislation to make essential improvements to the Small Business Administration's Minority Small Business and Capital Ownership Development Program, more commonly referred to as the Section 8(a) Program.

The 8(a) Program, properly used and properly managed, holds great potential to assist small business firms owned and controlled by socially and economically disadvantaged individuals to enter the mainstream of the Nation's economy with greater likelihood of success.

Despite many individual success stories, however, the program has failed to broadly achieve its potential, to the detriment of a majority of the firms it was intended to assist. The overall Congressional objective as a business development program, utilizing sole-source Federal contracts as a means to build technical and management skills, capital, and competitive capabilities, has too frequently been frustrated by SBA's inattention to aims beyond contracting, by poor management of resources, and by inadequate resources with SBA to build on the portfolio firm's skills.

Worse, the program has been plagued by outright corruption of a few firms with equally culpable accomplices within the SBA. Scandals allegedly involving high-ranking officials in the Reagan Administration have accentuated the program's poor management and its susceptibility to politicization.

In 1986, for instance, the Inspector General's office looked into a total of 170 cases of all types nationwide. Only 16 of those 170 were 8(a)-related, but those cases alone consumed 2,868 staff hours. In

1987, the overall caseload grew by 7 percent, while the number of 8(a) cases increased 100 percent and consumed 8,068 staff hours, almost three times as much as in 1986. In 1988, it is estimated that 8(a) investigations will require over 16,000 staff hours.

For 8(a) firms, there has been the temptation to focus on amassing more and more noncompetitive 8(a) contracts as the day of graduation approaches, postponing the uncertainties of competition. This and other problems can be traced to persistent management problems on the part of SBA. Presently, the program merely goes through the motions of being a business development program, providing only empty promises to thousands of minority entrepreneurs.

Today, we begin the consideration of two bills designed to refocus the 8(a) Program as an effective business development program for minority contractors and, we hope, limit possibilities for future abuse. S. 1993, the "Minority Business Development Program Reform Act of 1987," is a bipartisan effort between Senator Weicker and me, and was introduced on December 21, 1987, with the support and cosponsorship of Senator Kerry, the Chairman of our Urban and Minority-Owned Business Subcommittee.

This bill will be the principal focus of our attention during these hearings. In addition, we will be carefully considering a companion House bill, H.R. 1807, the "Capital Ownership Development Reform Act of 1987," which passed the House unanimously on December 1 last year.

The objectives of both bills are essentially the same, although the means to attain those objectives and purposes differ in many important ways. First, we are seeking to redefine the 8(a) Program as a comprehensive business development program that will substantially increase a program participant's prospects for future success following graduation.

Second, these bills seek to forcefully dispel the misconception that the 8(a) Program is a sole-source contracts program, as an "end" in itself. These objectives are to be attained through requirements that a program participant achieve a "business mix" that reflects declining dependence on 8(a) contracts and the introduction of competition exclusively among program participants for larger 8(a) contracting opportunities.

Third, our bill offers an array of provisions designed to improve the SBA's management of the program. These run the gamut from expediting program certifications to increased staffing. This bill establishes a division of minority small business certification to expedite the 8(a) application process and allow firms to appeal certification denials.

It requires firms to compete for 8(a) and non8(a) contracts and provides assistance to improve firms' competitive ability through a new direct loan program, a new revolving bid and proposal cost fund, and more SBA staff support.

Fourth, the bill seeks to deter abuse of the program by SBA employees, program participants, and ineligible individuals who fraudulently seek to reap the program's benefits. We are taking steps to lessen the potential for improper political influence on program decisions, which appears to have been so prevalent in the Wedtech scandal, which continues to unfold daily in the media.

Having mentioned Wedtech, I hasten to add that S. 1993 is not merely a response to this case or any other case, no matter how outrageous they ultimately are proven to be. Rather, S. 1993 is the product of a broader and deeper set of concerns about the efficacy and management of the 8(a) Program.

Under the leadership of the Committee's prior Chairman, Senator Weicker, we conducted a thorough survey of program graduates which culminated in a May 1987 Committee report. The often extensive period during which firms must wait for certification approval, the lack of sufficient contracting opportunities for its participants, and the high failure rate of graduated 8(a) businesses are all weaknesses of the program that must be addressed.

The Committee held oversight hearings on the program last year here in Washington and also in Boston. These program graduates told us of the strengths and weaknesses of the 8(a) Program. However, these were not the only sources of suggestions available to us.

There is, unfortunately, a virtual library of Congressional oversight hearings, investigations by the General Accounting Office and the SBA Inspector General, and management reviews by SBA and others, conducted over more than ten years, which identified needed reforms to the 8(a) Program. Even more distressing, it appears that the solutions have proved elusive to SBA's management.

Congress has felt compelled to intervene twice before: in 1978, with Pub. L. 95-507 and again in 1980 through Pub. L. 96-481. S. 1993 is the Senate's current and most comprehensive effort. H.R. 1807 is the House's shot. If these reforms fail to take root, some have suggested that we should stop trying to reform the 8(a) Program and take more drastic measures.

Given the program's potential, that would certainly be a difficult alternative for me. So for now, let's focus on refining a legislative package that will do the job. This is not a perfect bill, and the purpose of these hearings is to identify weaknesses which may be corrected in a full Committee markup, which I hope to schedule in March.

Today, we begin that process with the help of testimony from the program's managers, the spokesman for the procuring agencies that provide the contracting opportunities, the distinguished former Chairman of the House Small Business Committee, and representatives of the National Academy of Public Administration, which recently conducted a management review of the program's organization and operations.

Senator Weicker.

STATEMENT OF HON. LOWELL WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator WEICKER. Mr. Chairman, thank you very much. I would ask that my statement in its entirety be included in the record.

First, I want to thank the Chairman for his leadership on this matter, and the holding of these hearings, and his commitment to the passage of legislation, either identical or similar to that which is before us.

Point number two, the Chairman has mentioned those sections of the legislation, the ills which they address, the desired objectives

meant to be achieved, however, there is no legislation that the Congress can write that, with wrongdoing in mind, cannot be subverted by those who care to do so, be they in the Administration or beneficiary of the program.

Lastly, 8(a) itself, and whether we should even engage in this type of activity, I do not think there is any question as to the commitment of the Chairman. He has so stated. There can be no question as to the commitment of this Senator. As most in this room know, we went through a bitter hand-to-hand combat with this Administration on whether there should be an SBA, much less an 8(a) Program within SBA.

I can only say, speaking for this Senator, that I believe strongly in the concept of economic opportunity for minorities which is embodied in this program. This road, of economic opportunity coupled with educational opportunity, are the two paths which can help us achieve the ideals which we espouse.

This program addresses itself to economic opportunity. If the Chairman and myself suggest changes, it is done, not nibble away at a valuable concept, but rather to make sure that that concept is still around. Unless changes are made, this concept is not going to be around.

Indeed if you would put the 8(a) Program up as is, for an up and down vote on the floor of the Senate and the House today, I think it would go down by 2-to-1. In order to avert that kind of result, we have these hearings and we have this legislation.

But in the final analysis, somebody will always find a way around, if that is their intent. It requires integrity on the part of those that administer, and integrity on the part of those that are the beneficiaries of the program. In summary, I think that the changes that have been made here certainly bring a much-needed discipline to a program.

Again, I want to thank the Chairman, and I might add, regardless of whatever headlines there are today or tomorrow, the Chairman has been working on this, at least with this Senator and staff for well over a year. So, that is not the headline that brings us together, but the realization that the program represented here is too valuable to be lost by inaction or default.

[The prepared statement of Senator Weicker follows:]

OPENING STATEMENT OF
SENATOR LOWELL WEICKER, JR.

ON

S. 1993

THE MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987

FEBRUARY 2, 1988

TODAY'S HEARING MARKS THE BEGINNING OF SEVERAL TO TAKE PLACE CONCERNING THE "MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987" OR S. 1993, WHICH SENATOR BUMPERS AND I INTRODUCED IN DECEMBER. I WANT TO COMMEND THE CHAIRMAN FOR HIS LEADERSHIP AND INTEREST IN THIS LEGISLATION, WHICH I BELIEVE IS CRITICAL TO THE SUCCESS OR FAILURE OF THE MINORITY SMALL BUSINESS CAPITAL OWNERSHIP DEVELOPMENT PROGRAM, COMMONLY KNOWN AS "8(A)".

THE MESSAGE THAT WEDTECH, GAO REPORTS AND OTHER WELL DOCUMENTED PROBLEMS SENDS TO CONGRESS IS THAT THE PROGRAM IS NOT WORKING AS IT SHOULD. IT IS NOT PREPARING MINORITY FIRMS TO EFFECTIVELY OPERATE IN AN OPEN AND COMPETITIVE MARKETPLACE. THE TECHNICAL, FINANCIAL AND MANAGEMENT RESOURCES IT PROVIDES TO HELP DEVELOP FIRMS ARE SOMEHOW MISSING THE MARK.

I'M GREATLY CONCERNED ABOUT HOW AND WHY THE PROGRAM GOT IN THIS PREDICAMENT. AND I THINK IT BOILS DOWN TO THREE MAJOR ISSUES. ONE IS THAT POLITICS ALL TOO OFTEN DETERMINES WHO GETS AN 8(A) CONTRACT. THIS HAS GOT TO CHANGE. LARGE CONTRACTS MUST BE AWARDED BASED ON OBJECTIVE CRITERIA OF TECHNICAL COMPETENCE AND PRICE AND POLITICS SHOULD PLAY NO ROLE. ANOTHER IS THE OVER-

DEPENDENCE ON 8(A) CONTRACTS BY FIRMS PARTICIPATING IN THE PROGRAM. THE COMMITTEE HAS DETERMINED THIS TO BE A PROBLEM THAT LED MANY FIRMS TO FAILURE ONCE THEY LEFT THE PROGRAM BECAUSE THEY WERE NOT PREPARED FOR COMPETITION. IN FACT, OUR RECENT SURVEY OF 8(A) GRADUATES SHOWED NEARLY A THIRD ARE NO LONGER IN BUSINESS.

THIS LEADS ME TO THE THIRD ISSUE. THE PROGRAM IS RIDDLED WITH MISMANAGEMENT, AND LACKS CONSISTENT OPERATION FROM REGION TO REGION. IT CONCERNS ME GREATLY THAT FIRMS IN SOME REGIONS MUST WAIT TWO YEARS TO BE CERTIFIED; THAT OF 3000 FIRMS IN THE PROGRAM ABOUT HALF RECEIVED NO CONTRACTS LAST YEAR; BUSINESS OPPORTUNITY SPECIALISTS, THE KEY SBA PERSONNEL WHO HANDLE 8(A) CONTRACTS IN THE FIELD ARE OVER EXTENDED, AND TOO OFTEN, UNDERQUALIFIED FOR THE COMPLEX JOB THEY MUST PERFORM; AND BUSINESS DEVELOPMENT FUNDS HAVE NEVER BEEN PROPERLY ADMINISTERED. WHAT DISTURBS ME MOST IS THAT THESE ARE BASIC OPERATIONS OF THE 8(A) PROGRAM.

MR. CHAIRMAN, WE'VE GOT TO CORRECT THESE PROBLEMS AND GET THIS PROGRAM BACK ON THE RIGHT TRACK. I BELIEVE OUR BILL GOES A LONG WAY TO DO THAT, IF PROPERLY ADMINISTERED. SOME OF ITS HIGHLIGHTS INCLUDE: COMPETITION WITHIN THE PROGRAM FOR LARGE DOLLAR CONTRACTS WHICH SHOULD ELIMINATE MOST POLITICAL ABUSE; A REQUIRED BUSINESS MIX TO PREVENT OVER-DEPENDENCE ON 8(A) CONTRACTS; NEW OR STRONGER EMPHASIS ON BUSINESS DEVELOPMENT; CERTIFICATION AND OTHER ADMINISTRATIVE PROCESSES WOULD BE SHORTENED AND MADE CLEARER; A SPECIAL LOAN PROGRAM AND A BID AND PROPOSAL FUND WHICH WOULD PROVIDE ADDITIONAL FINANCIAL ASSISTANCE; AND STIFF PENALTIES FOR FRAUD AND ABUSE.

HOWEVER, IN THE FINAL ANALYSIS, WE ALL KNOW THE 8(A) PROGRAM IS ONLY AS EFFECTIVE AS PROCURING AGENCIES WANT IT TO BE; THAT SBA IS DEPENDENT ON GOVERNMENT AGENCIES FOR CONTRACT AWARDS. IN FY 1986, MINORITY BUSINESSES RECEIVED 2.4 PERCENT OF TOTAL FEDERAL PROCUREMENT DOLLARS. QUITE FRANKLY, I AM NOT SATISFIED WITH THE AMOUNT OR SCOPE OF MANY OF THESE CONTRACT AWARDS. OUR BILL SETS AN AMBITIOUS 5 PERCENT SET-ASIDE GOAL FOR ALL PROCURING AGENCIES, WHICH DOUBLES THE AMOUNT OF MINORITY BUSINESS FOR THE NEXT 4 YEARS.

SOME OF THESE PROPOSALS ARE GENERATING CONTROVERSY AND THESE HEARINGS WILL AIR MANY OF THOSE CONCERNS. BUT I WANT IT MADE CLEAR THAT THIS PROGRAM'S BASIC OPERATION HAS TO CHANGE IF IT IS TO STAY ALIVE AND BE PROTECTED FROM THOSE WHO WOULD DESTROY IT. STRONG MEASURES ARE NEEDED TO DO THAT.

MR CHAIRMAN, BEFORE I CLOSE, LET ME ALSO MAKE CLEAR MY SUPPORT FOR THIS PROGRAM. THERE IS NOT ONE SHRED OF DOUBT IN MY MIND THAT THE 8(A) CONCEPT IS STILL NEEDED TO ENSURE MINORITY BUSINESS ACCESS TO FEDERAL PROCUREMENT. DESPITE ITS MANY PROBLEMS, A NUMBER OF FIRMS HAVE ACHIEVED SUCCESS BECAUSE THIS PROGRAM PROVIDED THE OPPORTUNITY. THAT IS WHY I AM DETERMINED TO DO EVERYTHING IN MY POWER TO SAVE IT.

IT IS A PLEASURE, MR. CHAIRMAN, TO WELCOME TODAY'S WITNESSES. I LOOK FORWARD TO HEARING THEIR TESTIMONY.

The CHAIRMAN. Thank you, Senator Weicker. Senator Kerry.

STATEMENT OF HON. JOHN F. KERRY, A U.S. SENATOR FROM THE
STATE OF MASSACHUSETTS

Senator KERRY. Thank you very much, Mr. Chairman. Mr. Chairman, I share the comments of the distinguished minority ranking member and your comments. We are obviously here for two principal reasons. I suppose the first reason we are all here is that each of us continues to have a very strong commitment to the original purposes of the 8(a) Program and clearly we all have a strong commitment to helping minority-owned small businesses getting their share of the pie.

The second reason we are here is that the 8(a) Program, as it is currently structured and administered, has at least, I think, by broad perception and Senators have been watching it and others in the outside world obviously failed to promote, and facilitates business development within the minority community.

To many, it has become perhaps one of the worst symbols of ineffective administration, or even of waste and abuse. It has undermined the public confidence, broadly speaking, in government programs that have been dedicated to trying to guarantee that we will assist to the degree we can. Anyone should be able to enter the economic sector.

The staff of this Committee did a survey. Some of the most startling evidence of that survey that came up, I would like to just quickly share. First, although minorities represent more than 20 percent of the American adult population, and 27 percent of our child population, the minority business share of Federal procurement was a mere 2.4 percent of the total in 1986.

Perhaps we can take some comfort from the fact that 70 percent of the total Federal procurement share was in fact administered under the 8(a) Program. After 20 years of effort, I think we are left asking whether or not that is enough, and certainly whether or not 2.4 percent of the total is even remotely adequate.

Second, the survey showed that 100 firms in the program received almost 55 percent of the \$3.1 billion in 8(a) procurements. Nearly 1,500 firms were forced to split the remaining contracts available, and more than 1,500 firms got absolutely nothing at all. Clearly, this program, which is our major initiative to promote small minority business engagements, is reaching a very, very small slice of our Nation's 100,000 small minority businesses.

In geographic terms, the allocation of 8(a) contracts, I think, has been both poorly and unfairly administered. I was disturbed to learn, for instance, that in 1986, there were only three Boston firms among the Nation's top 100 8(a) contractors, with only \$31 million in contracts, and that between fiscal years 1984 and 1986, the volume of 8(a) contracts in the Boston region has fallen 40 percent.

In Philadelphia, by contrast, 26 firms executed 185 contracts worth over \$410 million. The figures for other cities across the country show the same kind of disparities, where there is evidently some lack of a guaranteed rationale for why and how these contracts are allocated.

Finally, and most disturbing of all, the survey found that an unacceptably large number of 8(a) companies, somewhere between 21 percent and 30 percent failed to remain in business even a few short years after they graduated from the program. Last year, thanks to the Chairman, I was able to hold field hearings in Boston on this very subject.

At that time, unanimously, the leaders of the minority community, both those who had tried to engage in this program and those that are currently engaged in this program, all testified and called on Congress to try to preserve and strengthen this program, but to reform it in a way that it would cease to be the target of abuse and begin to fulfill its original purposes.

Mr. Chairman, I am delighted that you are proceeding forward on this and I look forward to working both with the SBA, as well as with members of the minority community and other small business representatives in an effort to try to guarantee that those original purposes that Senator Weicker and others referred to are fulfilled and that we do what I think I know we can do.

It is not beyond reach, providing it is not administered irrationally and haphazardly in the way that, I am afraid, I think we have to say that it has been. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Kerry. Senator Pressler.

STATEMENT OF HON. LARRY PRESSLER, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator PRESSLER. Thank you very much, Mr. Chairman. I think this is a very appropriate hearing and review. Let me first of all welcome Senator Abdnor here, the Administrator of the SBA. I have a statement here in which I praise his directing the affairs of the SBA, both in the central office and its numerous field offices throughout the United States, the Virgin Islands, and Puerto Rico.

We are very proud of Jim in South Dakota. Let me say that my wife spoke at a Hutchison County South Dakota dinner last night. She was giving a report on Washington, and mention of Senator Abdnor's name brought a good round of applause. So, I hope 2 years after I have left the Senate, that happens to me in my home State.

The Chairman. I hope that is all it means.

[Laughter.]

Senator PRESSLER. In any event, let me say about section 8(a) that, in my State of South Dakota, every time I go back, there is controversy. We have a minority indian population, and I have worked very hard on jobs on the reservation. I have had Senator Weicker in my State and we have talked about this.

The efforts of getting jobs developed and businesses is very important. The best intentions are behind this legislation. There are a lot of very legitimate 8(a) businesses, but it is generally assumed by the taxpaying public that there are strawmen, so to speak, in most of these corporations, and that really they are not aboveboard. It has been a real problem.

Every time I go back, there are complaints, there are imagined problems and real problems, and the best intentions are behind this, but it has been a real headache in many ways also. I sort of

agree with the observation that if there were an up and down vote, I suppose it would be voted down.

I hope through these hearings we can find a way to get these minorities involved. I am very concerned about indians being involved from my State. I think there is a potential there. So, I guess we have to review all of the allegations and go forward with some new legislation.

Thank you, Mr. Chairman.

[The prepared statements of Senators Pressler, Dixon, and Sasser follow:]

STATEMENT OF SENATOR LARRY PRESSLER
before the
Senate Committee on Small Business
Hearing on S. 1993
February 2, 1988

MR. PRESSLER. First, Mr. Chairman, I wish to welcome my good friend and longtime colleague, Jim Abdnor, as he appears before our committee with respect to S. 1993, a bill which would revamp the Small Business Administration's section 8(a) program.

It has been almost a year since Jim took over the reins as Administrator of the Small Business Administration. In that relatively short time, he has done an excellent job of helping to restore confidence in the SBA and in boosting the morale of the people who are employed there.

I have heard nothing but praise for the way in which Jim Abdnor has been directing the affairs of the SBA, both in the central office and in its numerous field offices throughout the United States, the Virgin Islands and Puerto Rico. He is improving existing programs and initiating new activities that can only work to better serve the interests of this nation's small business community.

We in South Dakota take justifiable pride in Jim Abdnor, his dedication to public service and his accomplishments in both the legislative and executive branches of our government.

Senator Pressler
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Turning to the measure now before us, I wish to thank the Chairman and the Ranking Member for their diligence in bringing forward the Minority Business Development Reform Act. There is a very evident need for a revamping of the section 8(a) program, and this can only be accomplished by some major amendments to the pertinent sections of the Small Business Act.

I am pleased to note the Chairman has scheduled three days of hearings on S. 1993. The far-reaching amendments to the act need to be considered in the light of the concerns of those who administer the program, the small minority firms the program is designed to assist, and, of course, our citizens and taxpayers who must be concerned with the way in which these programs function. I look forward to hearing those who will be appearing before the committee on this legislation that is so vital to small minority firms.

STATEMENT OF SENATOR ALAN J. DIXON
BEFORE THE
SENATE SMALL BUSINESS COMMITTEE
HEARING ON S. 1993
FEBRUARY 2, 1988

THANK YOU, MR. CHAIRMAN.

I WANT TO COMMEND THE LEADERSHIP OF THIS COMMITTEE FOR PURSUING MODIFICATIONS TO THE MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM. RESULTS OF THIS COMMITTEE'S SURVEY OF 8(a) PROGRAM GRADUATES, AND TESTIMONY GIVEN AT A SUBSEQUENT FIELD HEARING, CLEARLY INDICATE THAT LEGISLATIVE REFORMS SHOULD BE UNDERTAKEN.

THE SMALL BUSINESS SECTOR OF OUR ECONOMY IS THE FASTEST GROWING SOURCE OF JOBS. THE 8(a) PROGRAM WAS SUPPOSED TO HELP SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS PARTICIPATE IN OUR ECONOMY BY PROVIDING ASSISTANCE TO SMALL FIRMS AND CONTROLLED BY THESE INDIVIDUALS. THIS ASSISTANCE WAS TO BE PROVIDED OVER SEVERAL YEARS IN THE FORM OF CONTRACT AWARDS AND BY DEVELOPING THEIR BUSINESS SKILLS. UNFORTUNATELY, MANY FIRMS DID NOT DEVELOP DURING THE COURSE OF THEIR PROGRAM PARTICIPATION TO THE POINT WHERE THEY COULD COMPETE ON THEIR OWN. WE NEED TO BE SURE THAT PARTICIPATING 8(a) FIRMS ARE COUNSELED, TRAINED, AND EXPERIENCED IN THE RIGORS OF COMPETITION BEFORE THEY GRADUATE. BENEFITS OF SUCH A GOAL ACCRUE NOT ONLY TO THE SMALL BUSINESS FIRM, BUT ALSO TO THE GOVERNMENT, I KNOW BECAUSE I WAS INSTRUMENTAL IN INTRODUCING COMPETITION

INTO THE SMALL BUSINESS PROCUREMENT PROCESS. WE STARTED COMPETITION FOR 8(a) CONTRACTS WITH GENERAL RAILROAD EQUIPMENT AND SERVICES, INC. OF EAST ST. LOUIS, ILLINOIS. THE RESULTS WERE VERY POSITIVE. I AM PLEASED TO SEE THAT THE SPIRIT OF THAT PILOT PROGRAM IS CONTINUED IN THIS LEGISLATION.

I AM ALSO PLEASED TO SEE THAT THE LEGISLATION PROVIDES FOR A TRANSITION SCHEDULE FOR THESE FIRMS, SO THAT THEY WILL NOT BE UNDULY RELIANT UPON 8(a) CONTRACTS AT THE TIME OF GRADUATION.

WHILE THERE REMAINS WORK TO BE DONE ON SOME OF THE COMPONENT PROVISIONS OF S. 1993, I THINK THAT ON BALANCE IT PROVIDES A FOUNDATION ON WHICH SMALL MINORITY BUSINESSES CAN BUILD THEIR FUTURE.

I THANK THE PARTICIPANTS AT TODAY'S HEARING FOR SHARING THEIR VIEWS ON THIS LEGISLATION, AS WELL AS ON SIMILAR LEGISLATION PASSED BY THE HOUSE. I LOOK FORWARD TO HEARING TESTIMONY THIS MORNING ON HOW WE CAN BEST CORRECT PROBLEMS WHICH HAVE BEEN BROUGHT TO LIGHT IN ADMINISTRATION OF THE 8(a) PROGRAM. IF WE ARE TO RETAIN MINORITIES' FAITH IN OUR HOPE TO INVOLVE ALL PEOPLE IN THE BUSINESS OF AMERICA, WE MUST TAKE POSITIVE STEPS NOW.

STATEMENT OF SENATOR JIM SASSER

SENATE SMALL BUSINESS COMMITTEE

HEARINGS ON S. 1993, THE MINORITY BUSINESS DEVELOPMENT

PROGRAM REFORM ACT OF 1987.

FEBRUARY 2, 1988

.1.

MR. SASSER: MR. CHAIRMAN, I WANT TO COMMEND YOU FOR THIS SERIES OF HEARINGS ON LEGISLATION TO MODIFY MINORITY BUSINESS DEVELOPMENT PROGRAMS. YOU AND THE COMMITTEE STAFF ARE TO BE APPLAUDED FOR THE MONTHS OF WORK THAT HAVE GONE INTO EXAMING THIS IMPORTANT ISSUE AND FASHIONING S. 1993.

THE QUESTION OF MINORITY BUSINESS OWNERSHIP IS ONE THAT DEMANDS CONTINUED ATTENTION BY THIS COMMITTEE AND BY THE ENTIRE CONGRESS. THE PRESIDENT'S LATEST REPORT ON THE STATE OF SMALL BUSINESS INDICATES THAT IN 1982 THERE WERE APPROXIMATELY 843,000 MINORITY-OWNED BUSINESSES IN AMERICA. THESE FIRMS REPRESENT ABOUT 6 PERCENT OF THE NATION'S BUSINESS POPULATION.

WHILE, THESE FIGURES ARE A SUBSTANTIAL IMPROVEMENT OVER EARLIER REPORTS, THEY ARE NOT AS ENCOURAGING AS WE WOULD LIKE. THE PRESIDENT'S REPORT POINTS OUT THAT MINORITIES ARE STILL LESS LIKELY TO OWN A SMALL BUSINESS. SOME 1.8 PERCENT OF THE MINORITY POPULATION OWNED A BUSINESS IN 1982 COMPARED WITH 6.4 PERCENT OF ALL BUSINESS OWNERS. MOREOVER, MINORITY-OWNED FIRMS ARE SMALLER THAN NONMINORITY BUSINESSES WITH LOWER SALES AND FEWER EMPLOYEES. INDEED, THE REPORT SUGGESTS THAT FEWER THAN ONE-SIXTH OF THESE MINORITY BUSINESSES HAD EMPLOYEES.

THE MINORITY BUSINESS DEVELOPMENT PROGRAM, OR THE 8(A) PROGRAM, HAS BEEN OUR GREATEST TOOL IN PROMOTING MINORITY OWNERSHIP OF SMALL BUSINESSES. FEDERAL CONTRACTS AWARDED THROUGH THE 8(A) PROGRAM REPRESENT OVER 60 PERCENT OF THE FEDERAL CONTRACTS GOING TO MINORITY FIRMS. THE DOLLAR VALUE OF 8(A) PROCUREMENT CONTRACTS WAS \$2.5 MILLION IN FISCAL YEAR 1985. THE DEPARTMENT OF DEFENSE AWARDS THE GREATEST NUMBER OF 8(A) CONTRACTS.

YET, AS WE ALL KNOW, THE 8(A) PROGRAM HAS BEEN TAINTED BY REPEATED HORROR STORIES OF ABUSE AND MISMANAGEMENT SINCE ITS INCEPTION. WHILE I HAVE BEEN GREATLY TROUBLED BY SUCH CASES, I AM EVEN MORE TROUBLED THAT THE "BAD EGGS" IN THE PROGRAM HAVE TENDED TO OBSCURE THE SUCCESS STORIES SPAWNED UNDER THE 8(A) PROGRAM. I KNOW THAT IN TENNESSEE WE HAVE A NUMBER OF SUCCESS STORIES MADE POSSIBLE THROUGH THE 8(A) PROGRAM, AND I SUSPECT THAT IS THE CASE IN OTHER STATES AS WELL.

BUT, WELL-MANAGED 8(A) COMPANIES DON'T GET THE HEADLINES. IT'S THE SCANDALS SUCH AS THE WEDTECH CASE WHICH CATCH THE PUBLIC'S EYE AND CAST DOUBTS ON THE WISDOM OF THE ENTIRE 8(A) PROGRAM.

THESE HEARINGS AND THE CHAIRMAN'S LEGISLATIVE PROPOSAL, S. 1993, ARE AN EFFORT TO GET THE 8(A) PROGRAM TO FOCUS ON ITS ORIGINAL STATUTORY OBJECTIVE. THAT OBJECTIVE IS SIMPLE ENOUGH -- TO BOOST MINORITY OWNERSHIP OF SMALL BUSINESSES THAT CAN COMPETE IN A COMPETITIVE MARKET. UNFORTUNATELY, THE 8(A) PROGRAM HAS NOT YET LIVED UP TO THAT GOAL.

THESE HEARINGS AND THE REFORMS SUGGESTED IN S. 1993 CAN GO FAR IN PUTTING US BACK ON THE PATH OF ACHIEVING THAT OBJECTIVE. I WOULD ONLY ADD MY FEAR THAT IF WE FAIL TO MOVE ON THE REFORMS SUGGESTED IN THIS BILL, WE MAY NOT ONLY JEOPARDIZE MEANINGFUL REFORM OF THE 8(A) PROGRAM, BUT WE COULD WELL JEOPARDIZE THE VERY EXISTENCE OF THE 8(A) PROGRAM.

The CHAIRMAN. Thank you, Senator Pressler. Senator Abdnor, I join Senator Pressler in welcoming you to the Committee this morning and the other Members of the Committee are happy to have you here, and we are prepared to hear your testimony.

STATEMENT OF HON. JAMES ABDNOR, ADMINISTRATOR, U.S. SMALL BUSINESS ADMINISTRATION, WASHINGTON, DC, ACCOMPANIED BY JOHN F. MOFFITT, ASSOCIATE DEPUTY ADMINISTRATOR FOR MANAGEMENT AND ADMINISTRATION; AND WILFREDO J. GONZALEZ, ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT

Mr. ABDNOR. Thank you, Mr. Chairman. This may shock you, but I am pleased to be here, and to discuss the issue before this Committee. I do not think there is anyone more concerned about it than I am from the day 1 when I accepted and took office.

I have with me today Wilfredo Gonzalez, who is the Associate Administrator for the Minority Small Business and Capital Ownership Development Program. On my right is John Moffitt, the Associate Deputy Administrator for Management and Administration. I brought these two gentlemen along because we expect to be asked questions, and they are knowledgeable on the program.

Senator D'Amato, it is great to see you here. I remember being here 10 months ago. That was the day I appeared before this Committee for my confirmation. I made a statement that day that I was going to be here through this period of time.

I did say then that I had every intention to try to make something out of this agency because it is a great agency. I can say that more today than I ever could when I started this. I had no idea of all the great things we do.

There are an awful lot of people in this country, and right here in this Congress, who think all we do at the SBA is shovel out a lot of interest-free money that we never collect. Nothing could be further from the truth. I am convinced that the Government gets more for its buck then they put into us than almost any agency around. We are going to prove it to you before the end of the year.

I have listened to all of you gentlemen speak and I agree with you on many things. Some of the things you said might have been a little harsh on us.

I am going to ask that I place my written statements into the record. It is our comments on the bill. We say many fine things about the bill, as well as a few things we would like to see corrected. I ask unanimous consent to insert that and several other documents into the record.

The CHAIRMAN. Without objection.

Mr. ABDNOR. Now, let me say that 8(a) is a good program. Unfortunately, all you hear about are the bad features. We have those, and that is unfortunate. There will always probably be some when you have a program, that is a bit liberal in some respects. I mean, it provides people with unusual opportunities and they take advantage of it. But there is always going to be somebody trying to figure out how to get in on the Christmas tree.

This is a good program and it is needed more today than ever before. At SBA, we are not just looking at today, we like to look down the road and what we are going to run into in the future. Secretary Bill Brock, before he left the Labor Department, commissioned a study by the Hudson Institute, I believe it was, and they reviewed the picture into the year 2000 and what it is going to look like.

They said in that study, and I believe them, that 80 percent of the new positions in the year 2000 are going to be filled by women, minority and immigrants. I voted for the immigration law in the 99th Congress. We are going to have a lot of people coming into this country and they are going to be minorities. We are going to welcome them and take them in.

8(a) is good for two reasons. It will train minorities to become business people, help them develop their own businesses, go out into the world and compete on the free market with everyone else when they are through. In the meantime, what are we to do with these people, the immigrants, the minorities?

Are we going to train them, give them jobs, make them productive citizens, so that they can contribute to their city, contribute to the state, contribute to the Federal Government and the whole country as a whole, or are we going to let them become wards of the country? This is the bill that will help them do it.

Mr. Chairman, I have never spent more time on any one thing, I do not think, than I have on the 8(a) program. I hardly knew much about it when I got down there, but we had meetings after meetings to talk about its problems. We sent some of our proposals and suggestions up here for your review hoping that it might be of some help because we, too, want to see an improved program. We, therefore, welcome the legislation.

I am not standing here telling you it is perfect, but you have some fine features in it. I just hope that you let us work with you to try to work this thing through where we might have some differences so we can all come together. I think it could be very easily done, because we need your legislation to go with some of the administrative changes we have made down there in our office.

We have taken a number of steps administratively. Let me tell you what I have done. We have reorganized our 8(a) central office structure. We have increased the level of the central staffing. We have added 10 people who are very professional, high-class people that we took from other areas of SBA. As a matter of fact, we are having to take a budget cut, but I thought it was important enough to put 10 new people in the program. We are making some great improvements. I would be happy to tell you about them. I would be happy to submit our list.

We made some other administrative changes in the program, and it is starting to work. As we start talking about new legislation there is one thing I would like to suggest. We must be extremely careful about too many discretionary decisions being made in it.

You mentioned, Mr. Chairman, that we have had different reform packages on this in the past and we are still where we were then. Some of you have said that the Congress is ready to vote on it. That would be a crime. Let's make a tougher bill out of S. 1993.

One where we do not have a lot of loopholes and discretionary decisions. I hope that does not occur in this piece of legislation.

We hear more from Congress than anyone else. I mean, I am not condemning anyone for this, I am not trying to be offensive about it, but if you could see the stack of letters I get, and our people get down there, telling us you would like to have us review this and see if we could change that. I mean not making threats at us or anything, but urging us. Let me tell you, you are pretty powerful people.

When ordinary people get this letter, it is a little hard to refuse to say I do not know if I dare go against that Senator Bumpers or not. He is a tough guy and he is our Chairman. I mean I am not saying anything—

The CHAIRMAN. Could you tell everybody that you are just saying that figuratively.

[Laughter.]

Mr. ABDNOR. I am, but let me add to that. These same 8(a) firms, they are smart. They go out and hire some of the most high-powered consultants they can find in this town, smart guys who load you down with the law. On legal issues I do not get involved.

We have a program man here who handles that, but I just want to make sure that our policies are followed and we give everyone a chance. When you put the consulting firms, the 8(a) firms, their friends in the Congress, then it becomes a pretty powerful force.

Let me tell you, Senator Weicker. The best bill you ever had in this Congress to help people was the GI Bill of Rights. Wouldn't you agree with that? That bill says you are going to go get an education if you are qualified within 6 years. That is it. When you are through you are through. Well, we do not do that with 8(a). We carry firms around here 17 and 18 years, and a lot of them are there today because somebody urges us to give in a little and say you can extend them. I am just saying the time has come when this has to stop.

Today, gentlemen, you are talking about the amount of contracts that go out under 8(a), but today more dollars are going into 8(a) contracts than ever before, but less companies are getting in the program. That is the thing I would like to stop.

I thought this program was to help people get started and help them along, and help the labor force get trained and go on after so many years, go out into the real world. Now, if we cannot get that done, then there is something wrong with us. I would like a chance at it for the remainder of the term.

Another thing I would like to point out is that we took budget cuts. I am not happy about this but I know I have got to accept it. I know when you are out of money and you need more money for your programs, you are going to take it out of somebody else's pocket. So, we are trying to make do. We are putting extra people where we think we need them. That is in our minority small business office.

But, gentlemen, again, no reflection on you, but it is human nature, and I have been as guilty as anyone by writing letters to SBA telling them to give me something for my constituents. You are not a good Congressman, or Senator, if you do not do it. You are representing your constituents and they have a right to get

whatever they can according to the law. Our fault is that we make it possible by letting this thing go on and on, instead of tightening it up. If we had a tight piece of legislation, then it would be easier on you in the longrun.

We are now dealing with less money. I just said, Senator D'Amato, that we put 10 new positions over in SBA. Very specialized professionals because we needed to straighten this program out. We did not have the positions open. We had to take some of our best people and move them into the MSB.COD program, but we thought that was where they ought to go.

We could use some more help. A year ago we had instructions from Congress to put personnel into the veteran's program, with no extra money for it. So, we had to put our FTEs out there. I do not know how many it was.

This year, in the continuing resolution you just passed, you added seven more new procurement people, very qualified people. That counts into our FTEs when we are already taking a 5 percent cut. In this legislation you are proposing a couple of new features that will take additional manpower, which we have not had before.

Please keep in mind that we are one of the smallest agencies in Government. We have been cutting back on our people all of the time and we are happy to take this. All I am saying is, you might as well manage us all right down the line on this if you do not give us some discretion as to where you think we ought to put our people.

Well, I have been going on far too much here, but we have made some improvements in the program. All I am saying is that you have a good bill. I think that there ought to be competition. I like that. I think there ought to be a set time to get out of the program. I think we ought to do more for these people, but I also believe we carry it too far with some of these added programs.

If there are any loopholes, if I can use the word, please tighten it up so that we can all work together and get on with our program by making it do the job we want it to do instead of leaving it open for a lot of people to challenge it by trying to figure some way to get in on the goodies. It is a great program. You need the program. You are going to need 8(a) more in the years ahead than ever before.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Abdnor follows:]



STATEMENT OF JAMES ABDNOR
ADMINISTRATOR
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE
FEBRUARY 2, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM PLEASED TO HAVE THIS OPPORTUNITY TO DISCUSS THE SMALL BUSINESS ADMINISTRATION'S MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAMS, AND IN PARTICULAR TO RESPOND TO YOUR REQUEST FOR OUR VIEWS ON S. 1993, THE MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987. YOU ALSO REQUESTED OUR VIEWS ON H.R. 1807, AS PASSED BY THE HOUSE, AND AN INDICATION OF PROBLEMS IN THE 8(A) PROGRAM

WHICH HAVE NOT BEEN ADDRESSED BY EITHER BILL. WE HAVE EXPRESSED OUR CONCERNS ABOUT H.R. 1807 IN TESTIMONY TO THE HOUSE SMALL BUSINESS COMMITTEE. IN THE INTEREST OF TIME I WOULD LIKE TO SUBMIT THEM FOR THE RECORD, TOGETHER WITH SOME ADDITIONAL COMMENTS WHICH HAVE ARISEN SINCE OUR TESTIMONY BEFORE THE HOUSE SMALL BUSINESS COMMITTEE.

FIRST, LET ME SAY THAT WE AT THE SMALL BUSINESS ADMINISTRATION (SBA) RECOGNIZE THAT THE 8(A) PROGRAM HAS HAD SOME SERIOUS PROBLEMS IN THE PAST AND THAT WE ARE COMMITTED TO WORKING WITH YOU TO CORRECT THESE PROBLEMS AND TO MOLD A STRONGER PROGRAM FOR WHICH WE CAN ALL BE PROUD. BEFORE I DISCUSS THE AGENCY'S VIEWS WITH RESPECT TO S. 1993, I WOULD LIKE TO DRAW YOUR ATTENTION TO SEVERAL IMPROVEMENTS WHICH I HAVE INITIATED WITHIN THE MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT (MSB&COD) PROGRAM SINCE MY TESTIMONY BEFORE THE HOUSE SMALL BUSINESS COMMITTEE. AS YOU KNOW, I COMMISSIONED THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION (NAPA) TO DO A COMPREHENSIVE STUDY OF THE MSB&COD PROGRAM. NAPA HAS CONCLUDED ITS STUDY AND THE AGENCY IS CURRENTLY REVIEWING NAPA'S RECOMMENDATIONS. SBA'S OFFICE OF MSB&COD HAS BEEN REORGANIZED TO EMPHASIZE CONSISTENT AND IMPARTIAL ADMINISTRATION OF THE PROGRAM. WE ARE ALSO IN THE PROCESS OF DEVELOPING NEW OR IMPROVED REGULATIONS CONCERNING VARIOUS ASPECTS OF THE MSB&COD PROGRAM, INCLUDING: REGULATIONS REGARDING ELIGIBILITY FOR

CONCERNS OWNED BY INDIAN TRIBES OR NATIVE AMERICAN CORPORATIONS; REGULATIONS TO IMPOSE TIGHTER ELIGIBILITY CRITERIA AND CONTRACT SUPPORT REQUIREMENTS; AND REGULATIONS TO IMPLEMENT PROTEST PROCEDURES IN CONJUNCTION WITH CONTRACT REQUIREMENTS COMPETED PURSUANT TO THE SMALL DISADVANTAGED BUSINESS PROGRAM AUTHORIZED BY PUBLIC LAW 99-661.

WHILE THE AGENCY BELIEVES THAT S. 1993 IS, IN MANY RESPECTS, AN IMPROVEMENT OVER H.R. 1807, WE DO HAVE SOME CONCERNS ABOUT THE BILL AS CURRENTLY DRAFTED. TODAY I WILL ADDRESS OUR MAJOR CONCERNS WITH S. 1993 AND I ASK THAT THE RECORD REMAIN OPEN TO PERMIT US TO PROVIDE A MORE DETAILED DISCUSSION OF OUR VIEWS ON SPECIFIC PROVISIONS OF THE BILL AND OTHER TECHNICAL CONCERNS NOT EXPRESSED IN MY TESTIMONY.

SBA OPPOSES THE INCLUSION OF PROPOSED FINDINGS 4 THROUGH 7 IN SECTION 101 OF THE BILL. WHILE WE RECOGNIZE THAT THERE IS ROOM FOR IMPROVEMENT IN THE PROGRAM'S ADMINISTRATION AND PROCEDURES, WE DO NOT BELIEVE THAT THE GOALS OF THIS REFORM ACT ARE PROMOTED BY THESE FINDINGS. WE ARE ALSO CONCERNED THAT THE ENUMERATION OF THESE FINDINGS IN STATUTORY LANGUAGE WOULD PREJUDICE THE GOVERNMENT'S POSITION IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS.

SECOND, SECTION 201 WOULD ESTABLISH A DIVISION OF MINORITY SMALL BUSINESS CERTIFICATION WITHIN THE OFFICE OF MSB&COD, HEADED BY A DIRECTOR WHO WOULD BE APPOINTED BY THE ADMINISTRATOR. IT WOULD ALSO ESTABLISH AN OFFICE OF THE DIVISION WITHIN EACH OF SBA'S REGIONAL OFFICES.

WHILE SBA AGREES WITH THE BILL'S PROPOSAL TO REMOVE RESPONSIBILITY FOR PROCESSING 8(A) APPLICATIONS FROM THE DISTRICT OFFICES AND TO RESERVE THAT FUNCTION FOR REGIONAL AND CENTRAL OFFICE PROCESSING STAFFS, SBA OPPOSES THE ESTABLISHMENT OF PROGRAMATIC REGIONAL OFFICES WHICH DO NOT REPORT TO THE REGIONAL ADMINISTRATORS.

IN ADDITION, WE STRONGLY OPPOSE THE CONCEPT OF POLITICAL APPOINTMENT OF THE DIVISION DIRECTOR. WE BELIEVE THAT SUCH A CHANGE WOULD BE CONTRARY TO ONE OF THE GOALS OF THIS PROPOSED LEGISLATION, WHICH IS TO DEPOLITICIZE THE 8(A) PROGRAM. IT WOULD BE PARTICULARLY ANOMOLOUS FOR A DIVISION DIRECTOR TO REPORT TO A CAREER ASSOCIATE ADMINISTRATOR FOR MSB&COD.

WE AGREE WITH THE CONCEPT UNDERLYING SECTION 203, ENTITLED GRADUATION STANDARDS. HOWEVER, WE OPPOSE THE PROPOSED COMBINATION OF REASONS FOR PROGRAM EXIT. WE SUGGEST THAT "GRADUATION" REFER ONLY TO THE EXPIRATION OF THE FIXED PERIOD OF PARTICIPATION AUTHORIZED BY STATUTE AND THAT THE

BILL INCORPORATE A NEW SECTION ENTITLED "COMPLETION" WHICH WOULD AUTHORIZE EXIT PRIOR TO THE END OF THE PARTICIPATION PERIOD BASED ON SBA'S DETERMINATION THAT THE FIRM HAS ACHIEVED ITS BUSINESS GOALS AND OBJECTIVES. WHILE WE SUPPORT THE CURRENT PRACTICE OF ALLOWING 8(A) PARTICIPANTS TO EXIT THE PROGRAM VOLUNTARILY FOR ANY REASON PRIOR TO THE END OF THEIR PARTICIPATION PERIOD, WE BELIEVE THAT PARTICIPANTS WHICH HAVE, IN SBA'S VIEW, ACHIEVED THE GOALS OF THEIR BUSINESS PLANS SHOULD NOT BE PERMITTED TO REMAIN IN THE PROGRAM. WE OPPOSE THE PROVISION WHICH WOULD MERELY GIVE FIRMS WHICH HAVE ACHIEVED THE GOALS OF THEIR BUSINESS PLANS THE ELECTION OF WHETHER TO LEAVE THE 8(A) PROGRAM. SUCH FIRMS WILL GENERALLY NOT ELECT TO LEAVE THE PROGRAM. THUS, WE FEEL THAT THE DECISION OF WHETHER A FIRM HAS MET ITS BUSINESS PLAN GOALS SHOULD BE LEFT WITH THE SBA, AND THAT SUCH FIRMS SHOULD BE REQUIRED TO LEAVE THE PROGRAM. IT IS SIMPLY UNFAIR TO POTENTIAL PROGRAM PARTICIPANTS TO ALLOW SUCH FIRMS TO RECEIVE PROGRAM BENEFITS BEYOND THOSE CONTEMPLATED IN THEIR BUSINESS PLANS.

WE HAVE NO OBJECTION TO THE REASONS FOR TERMINATION SET FORTH IN SECTION 204, BUT BELIEVE THAT SBA SHOULD HAVE THE DISCRETION TO ESTABLISH OTHER GROUNDS FOR TERMINATION BY REGULATION. WE WOULD, HOWEVER, ADD ANOTHER BASIS FOR TERMINATION. WE BELIEVE THAT A FIRM WHICH FAILS TO ACHIEVE A MINIMUM SPECIFIED LEVEL OF NON-8(A) CONTRACT SUPPORT IN

EACH YEAR OF PROGRAM PARTICIPATION SHOULD BE TERMINATED FROM THE PROGRAM. IT IS INAPPROPRIATE AND UNFAIR TO OTHER 8(A) AND POTENTIAL 8(A) PARTICIPANTS TO PERMIT FIRMS TO REMAIN IN THE PROGRAM WHEN CONTRACT AWARDS CANNOT BE MADE.

WE OPPOSE THE PROVISIONS OF SECTION 205, ENTITLED "CHALLENGING ELIGIBILITY," WHICH WOULD COMBINE PROTESTS REGARDING CONTINUED 8(A) ELIGIBILITY WITH THOSE ARISING UNDER SECTION 8(D) OF THE SMALL BUSINESS ACT AND UNDER THE SMALL DISADVANTAGED BUSINESS (SDB) PROGRAM AUTHORIZED BY PUBLIC LAW 99-661. MOREOVER, WE DO NOT BELIEVE THAT PROTESTS OF ANY KIND CONCERNING A FIRM'S SIZE OR DISADVANTAGED STATUS SHOULD BE AUTHORIZED WHERE AN 8(A) FIRM RECEIVES A NON-COMPETITIVE 8(A) AWARD, NOR DO WE BELIEVE THAT PROTESTS RELATING TO A FIRMS'S INITIAL 8(A) ELIGIBILITY CERTIFICATION SHOULD BE PERMITTED.

CURRENT PROCEDURES PROVIDE FOR SBA TO INITIATE TERMINATION ACTIONS WHENEVER INFORMATION IS RECEIVED WHICH ALLOWS SBA TO CONCLUDE THAT A FIRM IS NO LONGER ELIGIBLE FOR PROGRAM PARTICIPATION. WE BELIEVE THESE PROCEDURES MAY BE USED TO ENSURE PROGRAM ELIGIBILITY WITHOUT DISRUPTING THE PROGRAM.

IN ADDITION, AUTHORITY TO DECIDE 8(D) AND SDB CHALLENGES SHOULD NOT BE DELEGATED TO THE REGIONAL OFFICE, BUT RATHER, SHOULD BE MAINTAINED AT THE CENTRAL OFFICE LEVEL IN ORDER

TO INSURE THE CONSISTENT APPLICATION OF PROGRAM ELIGIBILITY CRITERIA.

SECTION 301 APPEARS TO REMOVE THE BUSINESS PLAN REVIEW FROM THE APPLICATION PROCESS. IF THAT IS THE GOAL, WE ARE STRONGLY OPPOSED. THIS SCHEME WOULD ESSENTIALLY CREATE A THREE STEP ELIGIBILITY PROCESS, AS FOLLOWS:

- 1) DETERMINATION OF CONTRACT SUPPORT AVAILABILITY;
- 2) DETERMINATION OF PERSONAL ELIGIBILITY; AND FINALLY
- 3) ESTABLISHMENT OF AN APPROVED BUSINESS PLAN.

THE PROPOSED PROCEDURES WOULD DEFEAT THE BILL'S INTENDED GOAL OF REDUCING APPLICATION PROCESSING TIME AND WOULD ELIMINATE OUR ABILITY TO EVALUATE A FIRM'S LIKELIHOOD OF SUCCESS AS AN ELIGIBILITY CRITERION. UNDER THIS PROCEDURE, SBA COULD FIND ITSELF IN THE POSITION OF CERTIFYING FIRMS FOR PROGRAM PARTICIPATION AND BEING UNABLE TO APPROVE THEIR BUSINESS PLANS.

SECTION 302 WOULD ESTABLISH A COMPETITIVE BID AND PROPOSAL COST FUND WHICH WOULD MAKE FINANCIAL ASSISTANCE AVAILABLE TO 8(A) FIRMS TO HELP DEFRAY THE COSTS TO BE INCURRED IN THE PREPARATION OF COMPETITIVE OFFERS. IN EFFECT, THIS IS A FORM OF BUSINESS DEVELOPMENT EXPENSE (BDE). SBA HAS TESTIFIED OPPOSING BDE IN ANY FORM AND THE ADMINISTRATION IS OPPOSED TO ANY LEGISLATION WHICH WOULD INCREASE THE

FEDERAL DEFICIT. MOREOVER, IF THE SBA IS TO PAY FOR THE COSTS OF PREPARING COMPETITIVE OFFERS, THE 8(A) FIRMS WILL NOT TRULY LEARN HOW TO PREPARE SUCCESSFUL OFFERS WITH THEIR OWN RESOURCES AFTER THEY LEAVE THE 8(A) PROGRAM. THE PROVISION WOULD AUTHORIZE AN 8(A) FIRM TO RECEIVE A MAXIMUM OF \$100,000 FROM SUCH FUND IN ANY FISCAL YEAR, BUT WOULD AUTHORIZE ONLY \$5,000,000 TO BE APPROPRIATED FOR THE FUND. THERE ARE APPROXIMATELY 3000 FIRMS CURRENTLY PARTICIPATING IN THE 8(A) PROGRAM. ASSUMING A \$5,000,000 FUND, ONLY 50 8(A) FIRMS IN ANY GIVEN FISCAL YEAR COULD RECEIVE FINANCIAL ASSISTANCE FROM THE FUND (ALSO ASSUMING THAT EACH OF THE 50 FIRMS RECEIVES THE \$100,000 MAXIMUM). POLITICAL LOBBYING WOULD INCREASE IN AN ATTEMPT TO INDUCE THE AWARD OF SUCH FINANCIAL ASSISTANCE TO SPECIFIC 8(A) FIRMS. SUCH A RESULT IS CONTRARY TO ONE OF THE PURPOSES OF THIS PROPOSED LEGISLATION (I.E., TO DEPOLITICIZE THE 8(A) PROGRAM). THEREFORE, FOR ALL OF THESE REASONS, WE MUST OPPOSE THIS SECTION.

WE DO, HOWEVER, SUPPORT SECTION 303 WHICH WOULD AUTHORIZE SBA TO ESTABLISH A TRAINING PROGRAM TO PROVIDE ASSISTANCE NECESSARY TO HELP 8(A) CONCERNS PREPARE PROPOSALS IN RESPONSE TO COMPETITIVE SOLICITATIONS.

WE OPPOSED SECTIONS 304 OF S. 1993 AND SECTION 7 OF H.R. 1807 WHICH WOULD PROVIDE ANTI-TRUST IMMUNITY FOR CERTAIN JOINT VENTURE AGREEMENTS INVOLVING SMALL BUSINESS CONCERNS

THAT ARE PROVIDED BY THE SBA ADMINISTRATOR WITH THE APPROVAL OF THE ATTORNEY GENERAL AND THE FEDERAL TRADE COMMISSION.

FIRST, WE SEE NO ADVANTAGE IN UNDERTAKING SUCH A REGULATORY APPROACH TO JOINT VENTURES. THIS WOULD INVOLVE POTENTIALLY EXCESSIVE GOVERNMENT OVERSIGHT OF VENTURES, THE STANDARDS FOR AND PARAMETERS OF WHICH ARE VAGUE AND OPEN-ENDED.

I DO NOT BELIEVE THE CASE FOR ANY NEW ANTITRUST IMMUNITY, ESPECIALLY FOR SMALL BUSINESS JOINT VENTURES, HAS BEEN MADE. JOINT VENTURES, UNLESS THEY ARE SHAMS COVERING NAKED PRICE FIXING OR BID RIGGING, RARELY PRESENT COMPETITIVE PROBLEMS, AND GENERALLY DO NOT ACUTUALLY VIOLATE THE ANTITRUST LAWS. IF THERE IS A PERCEIVED ANTITRUST PROBLEM WITH CERTAIN TYPES OF PROCOMPETITIVE JOINT VENTURES THAT IS UNREASONABLY DETERRING THEIR FORMATION, THE PROBLEM WOULD BE BETTER ADDRESSED THROUGH LEGISLATION OF GENERAL APPLICABILITY.

SECTION 305 WOULD AUTHORIZE A NEW MINORITY BUSINESS DIRECT LOAN PROGRAM. ANY SMALL BUSINESS THAT IS ELIGIBLE FOR 7(J)(10) OR 8(A) ASSISTANCE WOULD BE ELIGIBLE FOR THE NEW LOAN PROGRAM. A FIRM NEED NOT ACTUALLY BE RECEIVING SUCH ASSISTANCE; IT MUST ONLY BE ELIGIBLE. THE INTEREST RATE ON THE LOANS WOULD BE TWO PERCENT LESS THAN THE RATE ON DIRECT EQUAL OPPORTUNITY LOANS.

THIS PROVISION IS, IN MANY RESPECTS, AN IMPROVEMENT OVER THE COMPARABLE SECTION OF H.R. 1807; HOWEVER, IT STILL GIVES US GREAT CONCERN. THERE IS NO NEED FOR A NEW LOAN PROGRAM, AS 8(A) AND 7(J) FIRMS ARE ALREADY ELIGIBLE FOR ALL OF OUR EXISTING FINANCE AND INVESTMENT PROGRAMS.

THE SUBSIDIZED INTEREST RATE IS PARTICULARLY TROUBLESOME. IN 1981 CONGRESS ESTABLISHED A POLICY THAT THE PURPOSE OF SBA FINANCE PROGRAMS IS TO MAKE CREDIT AVAILABLE TO VIABLE SMALL BUSINESSES WHERE THE MARKET DID NOT MEET THEIR NEEDS. AT THAT TIME CONGRESS SPECIFICALLY REJECTED THE IDEA OF PROVIDING CREDIT AT SUBSIDIZED RATES. SBA AGREES WITH THIS POLICY AND, THEREFORE, OPPOSES THIS SECTION.

SBA SUPPORTS PROPOSED SECTION 401 WHICH WOULD ESTABLISH DECLINING 8(A) CONTRACTING CEILINGS OVER THE LAST FOUR YEARS OF THE PARTICIPATION PERIOD. THERE IS A PARTICULAR NEED HERE, HOWEVER, FOR MORE DEFINITIONAL LANGUAGE. FOR EXAMPLE, DO THE PERCENTAGES OF "TOTAL SALES" AS CEILINGS FOR 8(A) CONTRACT SUPPORT REFER TO SALES WHILE IN THE PROGRAM, OR THE MOST RECENTLY COMPLETED FISCAL YEAR, OR SOME OTHER MEASUREMENT? ARE THE PERCENTAGES TO BE GOALS OR REQUIREMENTS? AND, HOW AND IN WHAT YEAR ARE OPTIONS TO BE VALUED? IN ADDITION, WHILE 8(A) AWARDS, AS A PERCENTAGE OF TOTAL SALES, ARE TO DECLINE, THERE IS NO REQUIREMENT THAT NON-8(A) SALES BE AT A CERTAIN LEVEL. FOR EXAMPLE, IF 100%

OF A FIRM'S SALES IN ITS THIRD YEAR OF 8(A) PARTICIPATION ARE 8(A) SALES, THIS SECTION COULD BE READ TO REQUIRE ONLY THAT THE FIRM CANNOT RECEIVE MORE THAN 80% OF THAT THIRD YEAR TOTAL SALES FIGURE THROUGH THE 8(A) PROGRAM. WE BELIEVE THAT THE BILL SHOULD ALSO REQUIRE A CERTAIN LEVEL OF NON-8(A) SALES.

THE PROVISION OF SECTION 403 WHICH WOULD ENABLE THE SBA TO DIRECT THE AWARD OF ANY SECTION 8(A) CONTRACT TO ACHIEVE AN EQUITABLE DISTRIBUTION OF CONTRACTS AMONG THE SBA'S VARIOUS REGIONS AND PROGRAM PARTICIPANTS SHOULD ALSO REQUIRE THE CONSIDERATION OF THE POTENTIAL IMPACT ON THE OPERATIONS OF PROCURING ACTIVITIES. SUCH A PROVISION COULD ADVERSELY AFFECT A PROCURING ACTIVITY'S OPERATIONS. THUS, THIS PROVISION SHOULD INCLUDE COORDINATION WITH THE AGENCY OFFERING THE REQUIREMENT TO PRECLUDE SUCH IMPACT.

ONE PROVISION OF SECTION 403 WOULD MAKE AN 8(A) FIRM INELIGIBLE FOR THE AWARD OF A NONCOMPETITIVE 8(A) CONTRACT IF THE EXPECTED AWARD PRICE OF SUCH CONTRACT EXCEEDS BY MORE THAN 150% THE TOTAL CONTRACT PRICE PAID TO THE FIRM FOR THE PERFORMANCE OF ITS LARGEST PRIOR CONTRACT. THE SBA SUPPORTS THE BILL'S EFFORT TO REQUIRE A RATIONAL DEVELOPMENTAL PROGRESSION OF ONE 8(A) CONTRACT TO THE NEXT. HOWEVER, WE ARE CONCERNED THAT THIS PROVISION COULD BE CONSTRUED AS A SUBSTITUTE FOR THE ESTABLISHED METHOD FOR

DETERMINING FAIR AND REASONABLE PRICE ON 8(A) CONTRACTS. IN ADDITION, WE ASK FOR CLARIFICATION AS TO HOW OPTIONS WOULD BE TREATED UNDER THIS PROVISION AND WHETHER THE "LARGEST PRIOR CONTRACT" REFERS ONLY TO PRIOR 8(A) CONTRACTS, OR TO ANY PRIOR CONTRACT PERFORMED BY THE 8(A) FIRM.

SBA ALSO SUPPORTS THE INFUSION OF COMPETITION INTO THE 8(A) PROGRAM. THIS BILL WOULD MANDATE COMPETITION AMONG 8(A) FIRMS FOR CONTRACTS EXCEEDING \$2 MILLION FOR THE FURNISHING OF SUPPLIES, SERVICES (INCLUDING CONSTRUCTION), OR LEASING REAL PROPERTY TO CONDUCT A RETAIL ENTERPRISE. THE BILL WOULD ALSO REQUIRE THAT ALL OTHER 8(A) CONTRACTS IN EXCESS OF \$1 MILLION BE SUBJECT TO MANDATORY COMPETITION WITHIN THE PROGRAM. WE ARE IN FAVOR OF COMPETITION AS IT AFFORDS THE 8(A) FIRMS THE OPPORTUNITY TO PREPARE THEMSELVES TO COMPETE IN THE OPEN MARKET. THEY WOULD BE LEARNING PRICING STRATEGIES, BID PREPARATION PRACTICES, AND A HOST OF PRICE AND CONTRACT NEGOTIATION TACTICS. HOWEVER, THE PROVISION OF SECTION 403 WHICH WOULD REQUIRE THAT AWARDS BE MADE BY THE SBA ASSISTANT REGIONAL ADMINISTRATOR FOR MSB&COD COULD BE READ TO CONFLICT WITH PRESENT SBA IMPLEMENTATION OF THE FEDERAL ACQUISITION REGULATION IN CONTRACTING ACTIVITIES AND WARRANTS. THE SBA HAS DEVELOPED A WARRANTING PROGRAM WITH MUCH CARE AND ATTENTION OVER THE LAST FEW YEARS, AND HAS RECEIVED ENTHUSIASTIC PRAISE FROM OTHER FEDERAL

AGENCIES. WE DO NOT BELIEVE THAT THE ASSISTANT REGIONAL ADMINISTRATOR FOR MSB&COD SHOULD BE GIVEN THE EXCLUSIVE AUTHORITY CONCERNING 8(A) CONTRACTING AND WARRANTS IN HIS/HER REGION. THUS, IF THAT IS THE INTENT OF THIS PROVISION, WE MUST OPPOSE IT.

IF, HOWEVER, THE BILL ONLY INTENDS THAT THE ASSISTANT REGIONAL ADMINISTRATOR FOR MSB&COD BE HELD ACCOUNTABLE FOR ALL CONTRACTS ORIGINATING IN HIS/HER REGION AND THAT HIS/HER SIGNATURE MERELY ACTS AS A CONCURRENCE TO THE SBA CONTRACTING OFFICER RESPONSIBLE FOR THAT PARTICULAR 8(A) CONTRACT, WOULD NOT OBJECT TO THIS PROVISION.

FURTHER, THE PROVISION IN THIS SECTION CONCERNING THE REASONABLE EXPECTATION THAT AT LEAST TWO ELIGIBLE 8(A) FIRMS WILL SUBMIT OFFERS AND THAT AN AWARD CAN BE MADE AT A "FAIR MARKET PRICE" WOULD SEEM TO ALTER THE CURRENT STANDARD FOR MAKING A COMPETITIVE AWARD (I.E., FAIR AND REASONABLE PRICE). SUCH A CHANGE IS NOT REQUIRED FOR COMPETITIVE PROCUREMENTS RESTRICTED TO 8(A) FIRMS. PRICE ANALYSIS IS NORMALLY PERFORMED ON COMPETITIVE PROCUREMENTS TO ASSIST IN DETERMINING PRICE REASONABLENESS. WE BELIEVE THAT THIS PROGRAM SHOULD NOT BE CHANGED, AND, THUS, OPPOSE THIS PROVISION OF SECTION 403.

SBA APPLAUDS THE PROVISION OF SECTION 404 WHICH WOULD REQUIRE ALL CONTRACTS AWARDED UNDER SECTION 8(A) TO BE PERFORMED BY THE SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERN WHICH INITIALLY RECEIVED THE CONTRACT. SUCH A PROVISION, IN CONCERT WITH THE PROPOSED PROVISION WHICH WOULD HOLD THE CONTRACTOR AND ANY SUCCESSOR IN INTEREST LIABLE FOR REPROCUREMENT COSTS, WILL REDUCE THE INCENTIVE FOR PRINCIPALS OF 8(A) CONCERNS TO SELL THEIR CONCERNS AND WILL ENCOURAGE THEM TO DEVELOP THEIR BUSINESSES.

THE TIMEFRAMES IN THE PROVISION IN SECTION 405 AND THE REQUIREMENT FOR A WRITTEN DECISION ON THE SBA APPEAL OF AN AGENCY DECISION REGARDING 8(A) CONTRACT OPPORTUNITIES ARE CURRENTLY PRESCRIBED IN THE FEDERAL ACQUISITION REGULATION. SBA BELIEVES THAT SUCH GUIDELINES ARE NOT NEEDED IN STATUTE.

BOTH SECTION 503 OF THIS BILL AND A PROVISION OF H.R. 1807 WOULD INCREASE THE PENALTIES FOR MAKING FALSE STATEMENTS CONCERNING SIZE OR DISADVANTAGED STATUS. THE SENATE WOULD RAISE THE FINE FROM \$50,000 TO \$100,000, AND THE HOUSE WOULD RAISE THE FINE FROM \$50,000 TO \$500,000 AND THE POTENTIAL IMPRISONMENT FROM 5 YEARS TO 10 YEARS. WE HAVE SUPPORTED THE HOUSE PROVISION AS A STRONG ANTI-FRAUD MEASURE WHICH SHOULD SERVE AS A DETERRENT TO WRONGDOING. WE ALSO SUPPORT THE PROVISION OF SECTION 503 WHICH WOULD

IMPOSE SUCH PENALTIES ON 8(A) CONCERNS FOR FALSE STATEMENTS REGARDING COMPLIANCE WITH THE PERCENTAGE LIMITATIONS ON 8(A) CONTRACT SUPPORT REQUIRED BY THIS BILL.

THE ADMINISTRATION WOULD LIKE TO GO ONE STEP FURTHER AND RECOMMEND, AS WE TESTIFIED BEFORE THE HOUSE SMALL BUSINESS COMMITTEE, THAT THIS PROVISION BE STRENGTHENED BY PROVIDING FOR FORFEITURE OF ANY PROFITS DERIVED FROM GOVERNMENT CONTRACTS AWARDED TO A FIRM BASED ON ITS MISREPRESENTATIONS. WHILE A \$500,000 FINE MAY BE A SUBSTANTIAL PENALTY IN MANY CASES, IT MAY NOT HAVE A SUFFICIENT DETERRENT OR PUNITIVE EFFECT WHERE MILLIONS OF DOLLARS IN CONTRACTS ARE AWARDED TO A SINGLE CONTRACTOR. ALLOWING THE GOVERNMENT TO RECOUP PROFITS ON WRONGFULLY OBTAINED CONTRACTS WOULD GO FAR TOWARDS PREVENTING FUTURE MISCONDUCT.

I WOULD ALSO LIKE TO BRING TO YOUR ATTENTION ONE PROVISION OF H.R. 1807 WHICH, ALTHOUGH NOT CONTAINED IN S. 1993, IS PARTICULARLY TROUBLESOME TO SBA AND DESERVES TO BE HIGHLIGHTED. SECTION 19 OF H.R. 1807 WOULD PERMIT SMALL DISADVANTAGED BUSINESS CONCERNS TO EXCEED THE ESTABLISHED SMALL BUSINESS SIZE STANDARDS BY UP TO 25% ON CONTRACTS AWARDED THROUGH THE SDB PROGRAM. WE FEEL STRONGLY THAT SBA'S SIZE STANDARDS SHOULD BE APPLIED CONSISTENTLY TO ALL FEDERAL CONTRACTING PROGRAMS. TO ALLOW THE SIZE STANDARDS TO BE EXCEEDED BY 25% FOR THE SDB PROGRAM WOULD PERMIT

FIRMS WHICH ARE CONSIDERED TO BE "OTHER THAN SMALL" OR "LARGE" FOR EVERY OTHER FEDERAL PROGRAM TO SUBMIT OFFERS ON CONTRACTS AGAINST FIRMS WHICH ARE TRULY SMALL. THIS PROVISION IS UNRELATED TO THE SUBSTANTIAL 8(A) REFORMS CONTAINED IN BOTH THE SENATE AND HOUSE BILLS AND WE URGE THAT IT NOT BE INCLUDED IN ANY CONFERENCE MEASURE WHICH MAY RESULT.

THIS COMPLETES MY PREPARED STATEMENT. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

ADDITIONAL COMMENTS ON NEW LOAN PROGRAM
AUTHORIZED BY H.R. 1807

The House bill would create a new direct and guaranteed loan program. The only eligible borrowers would be firms in the transitional stage (stage 2) of the revised 8(a) program. For several reasons, SBA is strongly opposed to enactment of this section.

We have an array of loan and investment programs in existence--including 7(a), 502, 503, SBIC and MESBIC--for which 8(a) borrowers are already fully eligible. Consequently, the proposed 7(j) loan program is redundant.

A loan would have to be "of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern." No standard is created to define or measure "sound value." In contrast, current law requires all 7(a) loans to "be of such sound value or so secured as reasonably to assure repayment." A great effort has been made in recent years to cut the loss rate on SBA loans. We should not now put a law on the books that permits loans to be made without adequate assurance of repayment ability.

The proposal does not give SBA authority to set limits on guaranteed loan interest rates. Under Section 7(a), SBA has explicit authority.

A borrower would be legally eligible to receive a \$500,000 7(a) loan and a \$500,000 7(j) loan or guaranty, for a total loan or guarantee amount of \$1 million. In contrast, 7(a) and 503 borrowers are limited to a combined total of \$500,000. What is the rationale for the different treatment?

Any direct or immediate participation loan would have to be subordinated to all other debt of the borrower. We do not believe that such a requirement should be written into the law. SBA needs the flexibility to deal with individual situations and this provision eliminates that flexibility.

Certain provisions in the bill appear to authorize two different interest rates on the same loan.



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

FEB 1 1988

Honorable Dale Bumpers
Chairman
Committee on Small Business
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On December 4, 1987, the House of Representatives passed by voice vote H.R. 1807, a bill entitled "Capital Ownership Development Reform Act." Since this legislation has been transmitted to the Senate for consideration, I feel it is important for me to provide you with the views of the Administration and the Small Business Administration on those areas in H.R. 1807 with which we have serious concern.

Sections 5, 6, 8 and 15 would extend, and establish in statute, a firm's eligibility to participate in the 8(a) program from seven to nine years. The Administration is opposed to such an extension as it would restrict the number of minority firms that could be assisted under the program, and limit the number of firms that could compete for available procurements.

Section 7 would establish new direct and guaranteed loan programs for 8(a) firms, which would duplicate SBA's existing lending program. The only eligible borrowers would be firms in the transitional stage (stage 2) of the revised 8(a) program. The proposal would create confusion among lenders and prospective borrowers between our existing 7(a) program and the proposed 7(j) program. The proposal does not give SBA authority to set limits on guaranteed loan interest rates. Under Section 7(a) SBA has explicit authority.

We have an array of loan and investment programs in existence--including 7(a), 502, 503, SBIC and MESBIC--for which 8(a) borrowers are already fully eligible. Consequently, the proposed 7(j) loan program is redundant and should be deleted from the bill.

Section 7 would also establish a training program for employees or potential employees of 8(a) firms. This requirement would not only be costly but would be duplicative of the job training assistance provided under the Job Training Partnership Act and vocational education programs. Therefore, we recommend deletion of this requirement.

We recommend deletion of the portion of section 7 of the bill which would provide for a waiver of the Miller Act, a law which requires wage payment bonds by Federal construction contractors, to protect the wages of workers on such contracts. Under an existing provision of the Small Business Act, the Small Business Administration can exempt a small business (section 8(a)) from the Miller Act's bonding requirement once during a small business' first year of participation. Section 7 of H.R. 1807 would allow two exemptions from the Miller Act's bonding requirements during the first three years of a small business firm's participation.

We oppose this provision because we are concerned that default by small business firms utilizing the additional wage payment bonding exemptions provided by section 7 would unnecessarily remove the protection of wages for employees of small businesses engaged in Federal construction contracts. We believe that the existing small business exemption from the Miller Act's wage payment bonding requirement is sufficient to allow small construction contractors the opportunity to enter the Federal construction business, while at the same time reducing workers' wage protections to a minimal extent.

Section 7 also prohibits Business Development Expense (BDE) during the transitional stage of program development. We believe that a specific provision should be added to the bill that would eliminate BDE in all phases of development.

Section 9 would require SBA to measure the benefits and costs of the 8(a) program "on the economy." This provision should be deleted. SBA should be required to track 8(a) and former 8(a) participants to see to what extent the firms develop, but a requirement to gauge the effect on the overall economy would be overly burdensome.

Section 16(b) changes the language of Section 7 of the original bill amending Section 8(a) of the Small Business Act by requiring that program participants provide quarterly reports to the Associate Administrator for Minority Small Business and Capital Ownership Development. The reports must include a list of all representatives, including attorneys, accountants and consultants, who were retained by a small business to assist it in obtaining Federal contracts. In addition, the small business must report the amount of compensation it paid to these representatives and provide a description of the activities they performed. This removes the requirement in the original bill that such reports be made to the Inspector General's Office on a routine basis and, therefore, removes our immediate concerns in this area.

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As the bill now reads, the Associate Administrator "shall immediately report to the Inspector General of the Administration any suspicion of improper activity ascertained from a review of any report." We are in favor of the revised language.

Section 16(c) would require an 8(a) contract to be terminated for convenience where the concern which was awarded the contract changes ownership or control. We believe that any 8(a) contract or subcontract should be deemed null and void if the concern transfers, or attempts to transfer, the contract to any party prior to its completion, unless the following conditions are met: the proposed transferee is a current 8(a) participant, the transfer would be consistent with the transferee's business plan, and the contracting agency consents to the transfer. The Agency head should have the opportunity to determine whether the criticality of the items or the needs of the service would require continued production. We also believe that the 8(a) contractor and/or any successor in interest should be liable for any reprourement costs.

Section 16(d) of the revised bill would amend Section 16(d) of the Small Business Act to increase criminal penalties for making false statements to SBA from \$50,000 to \$500,000, and potential imprisonment from 5 years to 10 years. We support this provision as a strong anti-fraud measure which should serve as a deterrent to wrongdoing.

The Administration would like to go one step further and recommend, as we testified before the House Small Business Committee, that this provision be strengthened by providing for forfeiture of any profits derived from government contracts awarded to a firm based on its misrepresentations. While a \$500,000 fine may be a substantial penalty in many cases, it may not have a sufficient deterring or punitive effect where millions of dollars in contracts are awarded to a single contractor. Allowing the Government to recoup profits on wrongfully obtained contracts would go far towards preventing future misconduct.

Section 16(e) of the revised bill would amend Section 16(e) of the Small Business Act by adding a new paragraph which would provide that the Small Business Committee of either House may request an Inspector General investigation of any program or activity authorized under Sections 7(j) or 8(a) of the Small Business Act. The Inspector General may deny such a request for good cause no later than 15 days after the request is received. The Inspector General must provide a written and detailed explanation of the denial within this 15-day period. In addition, the bill would require the Inspector General to keep the Committee informed of the

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progress of any investigation and to furnish detailed written reports of findings.' The paragraph in the original bill requiring the Inspector General to inform the Committee as to the advisability of release or disclosure of potentially sensitive material has been dropped from this bill.

The Congressional Committee has existing authority to request an Inspector General to perform an investigation, and an Inspector General has authority under the Inspector General Act of 1987 to respond to such a request directly and without interference by any Agency official, -- it appears that this provision merely restates existing law and practice.

In any event, if Congress determines this provision to be necessary, then we suggest that a thirty-day period would provide a more workable time frame.

It is our recommendation that language be added providing for prior consultation with the Inspector General before a Committee releases any information that may affect national security or may protect any other private or public interest.

We have no overall objection to Section 16(e)(B) which would require the Inspector General to keep the Committee informed as to the progress and results of an investigation. However, we are concerned with those situations wherein the release of information would violate some other provision of law, e.g., Grand Jury secrecy, or otherwise impede an investigation or prosecution. Accordingly, we recommend the addition of this language at the end of the subsection:

"unless the provision of such information would violate Grand Jury secrecy or otherwise compromise an investigation or prospective prosecution."

Section 17 provides for an exemption for 8(a) concerns from the "non-manufacturer" rule. We recommend deletion of this section as this would introduce an increased advantage to 8(a) concerns in the set-aside program over other small concerns. It would be counterproductive in terms of experience to be gained because 8(a) concerns will be of the opinion that they do not have to follow government procurement regulations. The Administration supports an exception to the "non-manufacture rule" where there are no small business manufacturers or processors of a particular product participating in the Federal market, but believes that such an exception should apply to all

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small business regular dealers, not merely to 8(a) regular dealers.' It is also not clear whether this section would exempt 8(a) concerns from the requirement of section 15(o) of the Small Business Act which requires that at least 50 percent of the cost of the contract performance incurred for personnel shall be expended for employees of the concern.

Section 19 would permit small disadvantaged business concerns to exceed the established small business size standards by up to 25% on Section 1207 contracts. The Administration feels strongly that SBA's size standards should be applied consistently to all Federal contracting programs. To allow the size standards to be exceeded by 25% for the SDB program would permit firms which are considered to be "other than small" or "large" for every other Federal program to submit offers on contracts against firms which are truly small. This provision should be deleted.

Section 23(b) consolidates the Business Opportunity and Contracts Specialists functions. This provision is inappropriate because the Contract Specialist functions require broad-based contracts experience and training. SBA currently has in place a professional Contracting Officer program for its contracting personnel.

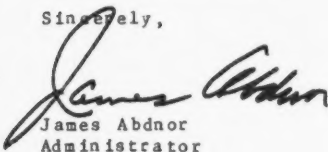
Section 23(d) provides that the performance appraisal system applicable to a Business Opportunity Specialist afford substantial recognition to how well the specialist's assigned portfolio of firms are achieving competitiveness and furthering the business development purposes of the program.

We feel this provision is inappropriate because a Business Opportunity Specialist cannot control the contract opportunities available for a specific 8(a) concern, nor can he or she control the business decisions of the firm.

The Administration is supportive of the House passed version of H.R. 1807 as long as Congress gives consideration to the concerns and recommendations expressed above.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,


James Abdnor
Administrator



U.S. Small Business Administration

Washington, DC 20416

STATEMENT OF
JAMES ABDNOR
ADMINISTRATOR
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON PROCUREMENT, INNOVATION, AND
MINORITY ENTERPRISE DEVELOPMENT
COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES
JUNE 4, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO HAVE THIS OPPORTUNITY TO DISCUSS THE SMALL BUSINESS ADMINISTRATION'S MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAMS, AND IN PARTICULAR TO IDENTIFY AND RESPOND TO THE PROBLEMS FACING THESE PROGRAMS AND TO PRESENT THE AGENCY'S VIEWS ON H.R. 1807.

THE BILL IS DESIGNED TO CURB PERCEIVED ABUSES IN THE SECTION 8(a) PROGRAM. WE AGREE THAT CERTAIN ABUSES HAVE OCCURRED IN THE 8(a) PROGRAM AND WE WHOLEHEARTEDLY SUPPORT THEIR ELIMINATION.

DELIVERY OF PROGRAM BENEFITS WHILE MAINTAINING THE UNTARNISHED IMAGE OF THE AGENCY AND THAT OF THE UNITED STATES GOVERNMENT IS OUR PARAMOUNT OBJECTIVE. TO THIS END, THE SMALL BUSINESS ADMINISTRATION PUBLISHED A NEW SET OF REGULATIONS, EFFECTIVE NOVEMBER 24, 1986, AND RECENTLY INSTITUTED NEW STANDARD OPERATING PROCEDURES, EFFECTIVE APRIL 27, 1987, FOR THE 6(a) AND 7(j) PROGRAMS. THESE REGULATIONS AND OPERATING PROCEDURES WILL ASSIST THE SBA TO MORE EFFECTIVELY MANAGE THE 8(a) AND 7(j) PROGRAMS AND SHOULD ELIMINATE MANY OF THE ABUSES WHICH HAVE OCCURRED IN THESE PROGRAMS IN THE PAST.

FOR INSTANCE, THE REGULATIONS PROHIBIT THE AGGREGATE DOLLAR AMOUNT OF 8(a) CONTRACTS TO AN 8(a) CONCERN FOR ANY FEDERAL FISCAL YEAR FROM EXCEEDING BY MORE THAN TWENTY-FIVE PERCENT THE APPLICABLE ANNUAL 8(a) CONTRACT SUPPORT LEVEL APPROVED BY THE SBA AS REFLECTED IN THE CONCERN'S BUSINESS PLAN. SUCH A PROVISION IS INTENDED TO LESSEN THE OCCURENCE OF 8(a) FIRMS LOADING UP ON 8(a) CONTRACTS IMMEDIATELY PRIOR TO THE EXPIRATION OF THEIR FIXED PROGRAM PARTICIPATION TERM. IN ADDITION, THE RULES REQUIRING AT LEAST FIFTY-ONE PERCENT OWNERSHIP OF A CORPORATE 8(a) CONCERN'S STOCK BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS WERE CLARIFIED IN THE STANDARD OPERATING PROCEDURES SO THAT A CURRENT 8(a) CORPORATE PARTICIPANT CANNOT CONTINUOUSLY ISSUE NON-VOTING COMMON STOCK OR PREFERRED STOCK WITH IMPUNITY. SPECIFICALLY, SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS WOULD BE REQUIRED TO OWN AT LEAST FIFTY-ONE PERCENT OF THE COMBINED TOTAL OF OUTSTANDING

SHARES OF ALL CLASSES OF STOCK, IN ADDITION TO OWNING AT LEAST FIFTY-ONE PERCENT OF ALL CLASSES OF VOTING STOCK.

THERE ARE MANY OTHER STEPS THAT THE AGENCY HAS TAKEN TO CURTAIL FRAUD AND PROGRAM ABUSES, SOME OF WHICH ARE INCLUDED IN APPENDIX I TO MY TESTIMONY AND SOME WILL BE ADDRESSED BY MR. GONZALEZ IN HIS TESTIMONY. I APPLAUD THE EFFORT OF THE SUBCOMMITTEE TO ATTEMPT TO FURTHER ELIMINATE PROGRAM ABUSES. I SHARE YOUR CONCERN AND HOPE THAT BY WORKING TOGETHER WE CAN BRING ABOUT NECESSARY AND PRUDENT CHANGES.

WHILE WE AGREE WITH SOME OF THE CONCERNS RAISED BY H.R. 1807, THE SBA DOES NOT BELIEVE THAT IT IS THE ONLY APPROACH TO SOLVING THE PROBLEMS OF THE 8(a) PROGRAM. BEFORE I ADDRESS THE AGENCY'S VIEWS CONCERNING H.R. 1807, I WOULD LIKE TO MENTION OTHER ALTERNATIVES WHICH SHOULD BE CONSIDERED BEFORE ANY CHANGES ARE HASTILY MADE.

CONGRESS HAS FOUND THAT THE OPPORTUNITY FOR FULL PARTICIPATION IN OUR FREE ENTERPRISE SYSTEM BY SOCIALLY AND ECONOMICALLY DISADVANTAGED PERSONS IS ESSENTIAL IF WE ARE TO OBTAIN SOCIAL AND ECONOMIC EQUALITY FOR SUCH PERSONS AND IMPROVE THE FUNCTIONING OF OUR NATIONAL ECONOMY. CONGRESS HAS ALSO FOUND THAT THE CONDITIONS FACING SUCH DISADVANTAGED INDIVIDUALS CAN BE IMPROVED BY PROVIDING THE MAXIMUM PRACTICABLE OPPORTUNITY FOR THE DEVELOPMENT OF SMALL BUSINESS CONCERNS OWNED BY

SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS. I BELIEVE THAT THE STRUCTURE OF THE 8(a) PROGRAM SHOULD BE REEXAMINED IN THIS LIGHT. THE PROGRAM IS INTENDED TO DEVELOP BUSINESSES OWNED BY DISADVANTAGED INDIVIDUALS. SOME ABUSES HAVE OCCURRED IN THE PAST WHERE 8(a) CONCERNS HAVE NOT DEVELOPED TO THE POINT WHERE THEY CAN REMAIN INDEPENDENT BUSINESS ENTITIES AFTER THEIR PARTICIPATION IN THE PROGRAM HAS ENDED. RATHER, A SMALL PERCENTAGE OF 8(a) CONCERNS HAVE BECOME TAKEOVER TARGETS, OR THEY BECOME BUSINESSES THAT CANNOT COMPETE IN EITHER THE UNRESTRICTED OR SMALL BUSINESS SET-ASIDE MARKETPLACES. IN THE FORMER CASE, THE 8(a) PROGRAM MAY HAVE MADE A FEW DISADVANTAGED INDIVIDUALS WEALTHY. IN THE LATTER CASE, THE BUSINESS ULTIMATELY FAILS AND NO ONE BENEFITS. BUT IN NEITHER CASE HAS THE PROGRAM ACHIEVED ITS OBJECTIVE OF DEVELOPING INDEPENDENT AND COMPETITIVELY VIABLE DISADVANTAGED SMALL BUSINESSES.

CONTRACTING WITH THE GOVERNMENT THROUGH THE SBA SHOULD BE JUST ONE TOOL TO ACCOMPLISH THIS OBJECTIVE. IT SHOULD NOT BE THE ONLY TOOL. OTHER ASSISTANCE SHOULD BE STRESSED SO THAT 8(a) CONCERNS CAN SURVIVE AS INDEPENDENT BUSINESSES AFTER THEIR PARTICIPATION IN THE 8(a) PROGRAM HAS ENDED.

ONE SUGGESTION WHICH HAS SURFACED WITHIN THE SBA IS TO SCRAP THE IDEA THAT CONTRACTS UNDER THE 8(a) PROGRAM SHOULD BE AWARDED TO DISADVANTAGED BUSINESSES UNDER THE SOLE SOURCE

METHOD OF PROCUREMENT. INSTEAD, THIS SUGGESTED APPROACH ENVISIONS A COMPETITIVE SET-ASIDE PROGRAM EXCLUSIVELY FOR DISADVANTAGED SMALL BUSINESS ALONG THE LINES OF THE PRESENT REGULAR SET-ASIDE PROGRAM. UNDER THIS PROPOSAL, ALL CONTRACTS WOULD BE LET DIRECTLY BY PROCURING AGENCIES THROUGH COMPETITION. SUBCONTRACTING AUTHORITY FROM THE SEA WOULD BE ELIMINATED. ONLY 8(a) CONCERNS WOULD BE AUTHORIZED TO SUBMIT OFFERS IN ANY SUCH COMPETITION. LIMITS COULD BE PLACED ON THE SUPPORT RECEIVED THROUGH COMPETITION SO THAT A FIRM COULD NOT SUBMIT OFFERS ON 8(a) PROCUREMENTS ONCE IT HAS ACHIEVED ITS PLANNED LEVEL OF 8(a) SUPPORT DURING ANY CONTRACTING PERIOD. THE SELECTION PROCESS OF A PARTICULAR 8(a) CONCERN WOULD BE BASED ON THE CONCERN'S OWN ABILITIES IN COMPETITION. CLAIMS OF BIAS OR FAVORITISM AGAINST THE SBA IN SELECTING ONE 8(a) CONCERN OVER ANOTHER SHOULD BE ELIMINATED.

ANOTHER SUGGESTION WOULD REQUIRE COMPETITION IN THE 8(a) PROGRAM AFTER AN 8(a) CONCERN REACHED A CERTAIN POINT IN ITS DEVELOPMENT IN THE 8(a) PROGRAM. UNDER SUCH AN APPROACH, THE NORMAL SOLE SOURCE METHOD OF PROCUREMENT WOULD BE USED IN THE EARLY DEVELOPMENTAL STAGES OF A CONCERN'S PARTICIPATION IN THE PROGRAM AND COMPETITION AMONG OTHER 8(a) CONCERNS AFTER THE FIRM HAS REACHED A CERTAIN STATUS. THIS STATUS COULD BE MEASURED IN TERMS OF NUMBER OF 8(a) AWARDS, YEARS IN THE 8(a) PROGRAM, BY PERCENTAGE OF BUSINESS PLAN ACHIEVED, OR WHERE AN 8(a) CONCERN'S FINANCIAL RATIOS REPRESENT A LEVEL OF ACHIEVEMENT COMPARABLE TO THOSE OF NON-DISADVANTAGED FIRMS COMPETING IN THE OPEN MARKET.

TO WHATEVER EXTENT COMPETITION IS PERMITTED, IT WOULD PROVIDE AN ENVIRONMENT IN WHICH 8(a) FIRMS WOULD ACQUIRE THE SKILLS NECESSARY TO COMPETE IN THE OPEN MARKET. THEY WOULD BE LEARNING PRICING STRATEGIES, BID PREPARATION PRACTICES, AND A HOST OF PRICE AND CONTRACT NEGOTIATION TACTICS. IN SHORT, COMPETITION AMONG OTHER 8(a) CONCERNS, COUPLED WITH AN EMPHASIS ON BUSINESS DEVELOPMENT TRAINING AND ASSISTANCE BY THE SBA, WOULD TEACH THESE FIRMS ALL OF THE BUSINESS SKILLS NEEDED TO SURVIVE AND FLOURISH IN THE COMPETITIVE MARKETPLACE OUTSIDE THE 8(a) PROGRAM. SUCH A RESTRUCTURED PROGRAM WOULD PROVIDE FOR A MORE LOGICAL PROGRESSION INTO THE FEDERAL PROCUREMENT MARKETPLACE UPON THE TERMINATION OF A FIRM'S PARTICIPATION IN THE PROGRAM.

SBA WOULD CONTINUE TO CERTIFY CONCERNS AS ELIGIBLE FOR PARTICIPATION IN THE PROGRAM, REGULATE AND MONITOR THE PROGRAM, TERMINATE CONCERNS FOR CAUSE, CARRY OUT ITS SIZE FUNCTIONS, AND PROVIDE BUSINESS DEVELOPMENT ASSISTANCE TO PARTICIPANTS IN THE 8(a) PROGRAM. MOREOVER, THE CERTIFICATE OF COMPETENCY (COC) PROGRAM WOULD BE AVAILABLE IF THE CONTRACTING OFFICER OF THE PROCURING AGENCY WERE TO FIND THE 8(a) LOW BIDDER TO BE NON-RESPONSIBLE. THE SBA WOULD BE ABLE TO CERTIFY THE COMPETENCY OF AN 8(a) FIRM TO PERFORM A PARTICULAR CONTRACT IF THE SBA COULD SATISFY ITSELF OF THAT LIKELIHOOD UNDER THE NORMAL COC PROCEDURES. THE COC DETERMINATION WOULD BE FINAL AND BINDING ON THE PROCURING AGENCY.

OTHER RECOMMENDATIONS HAVE BEEN MADE WITH RESPECT TO THE FIXED PROGRAM PARTICIPATION TERM (FPPT) REQUIREMENT. UNDER ONE APPROACH, ALL CONCERNS ADMITTED TO THE 8(a) PROGRAM, REGARDLESS OF THE NATURE OF THEIR BUSINESS, WOULD AUTOMATICALLY BE GIVEN A SPECIFIED TERM OF 8(a) PARTICIPATION. PARTICIPATION IN THE 8(a) PROGRAM WOULD END AFTER THIS PERIOD EXPIRES. THERE WOULD BE NO EXTENSIONS OF THIS FIXED FPPT. RECOMMENDATIONS REGARDING THE LENGTH OF PROGRAM PARTICIPATION HAVE RANGED FROM SEVEN TO TEN YEARS. UNDER THIS APPROACH, COMPLAINTS OF FAVORITISM, BIAS, AND/OR SUBJECTIVITY IN THE FPPT NEGOTIATION AND EXTENSION PROCESS WOULD BE ELIMINATED.

I MENTION THESE ALTERNATIVES SO THAT A DIALOGUE CAN BEGIN BETWEEN THE SBA AND CONGRESS THAT WOULD TRULY CONSIDER ALL POSSIBILITIES TO STRENGTHENING THE 8(a) PROGRAM. I BELIEVE THAT PROGRESS CAN BE MADE ONLY THROUGH MUTUAL COOPERATION AND SUPPORT. I DO NOT NECESSARILY AGREE OR DISAGREE WITH ANY SINGLE APPROACH, OR WITH THE APPROACHES OUTLINED ABOVE, BUT BELIEVE THAT ALL IDEAS SHOULD BE GIVEN DUE CONSIDERATION. THE AGENCY REALIZES THAT THE NOTION OF COMPETITION IN THE 8(a) PROGRAM WOULD BE A SIGNIFICANT DEPARTURE FROM THE WAY THE PROGRAM IS CURRENTLY DESIGNED. BUT WE FEEL THAT BOTH OF THE APPROACHES OUTLINED ABOVE WHICH INCLUDE SOME FORM OF COMPETITION SHOULD BE CONSIDERED ALONG WITH REFINEMENTS TO THE CURRENT SYSTEM AS POSSIBLE SOLUTIONS TO SOME OF THE PROBLEMS FACING THE 8(a) PROGRAM.

WE CONCEDE THAT OTHER PROBLEMS IN THE PROGRAM ALSO NEED TO BE ADDRESSED, BUT FEEL THAT THE SBA'S INSIGHT INTO THE ADMINISTRATION OF THE CURRENT PROGRAM SHOULD BE USED TO THE BENEFIT OF THE PROGRAM AS A WHOLE. THE AGENCY HAS IDENTIFIED SEVERAL ASPECTS OF THE PROGRAM WHICH DESERVE FURTHER DISCUSSION AND DEBATE, INCLUDING OUR CONCERNS REGARDING THE SALE OF 8(a) CONTRACTS AND FIRMS TO NON-8(a) BUSINESSES, THE LENGTH OF TIME INVOLVED IN PROCESSING APPLICATIONS, THE CLARITY OF CERTAIN GUIDELINES, THE ADEQUACY OF STAFF TRAINING, AND METHODS OF ESTABLISHING CONTRACT SUPPORT LEVELS. MY STAFF WOULD BE HAPPY TO SIT DOWN WITH ANY OF YOU OR YOUR STAFF TO DISCUSS ALTERNATIVE APPROACHES TO THE 8(a) PROGRAM. THE SBA IS ALSO CONSIDERING HOLDING HEARINGS THROUGHOUT THE COUNTRY TO SOLICIT IDEAS FROM FORMER AND PROSPECTIVE 8(a) PARTICIPANTS, THE PUBLIC AT LARGE AND GOVERNMENT CONTRACTING AGENCIES CONCERNING THE POSSIBLE RESTRUCTURING OF THE 8(a) PROGRAM.

I WOULD NOW LIKE TO RESPOND GENERALLY TO THE PROVISIONS OF H.R. 1807 BY PRESENTING SBA'S VIEWS TO THE MAJOR PROVISIONS OF THE BILL AS OUTLINED BY THE SUBCOMMITTEE. MR. GONZALEZ WILL RESPOND TO THE BILL IN MORE DETAIL IN HIS STATEMENT. LET ME FIRST SAY THAT WHILE WE DISAGREE WITH CERTAIN PROVISIONS OF THE BILL, WE SHARE YOUR CONCERN ABOUT THE PROBLEMS WHICH THE BILL ATTEMPTS TO REMEDY. WE BELIEVE THAT MANY OF THESE CAN BE, AND ARE BEING, ADDRESSED ADMINISTRATIVELY AND THEREFORE OPPOSE H.R. 1807 AS CURRENTLY DRAFTED.

STOCK OWNERSHIP

THE BILL WOULD PROHIBIT SBA EMPLOYEES AND FORMER SBA EMPLOYEES (FOR FIVE YEARS AFTER LEAVING SBA) FROM HOLDING STOCK IN ANY 8(a) FIRM THAT WAS CERTIFIED FOR PARTICIPATION IN THE PROGRAM WHILE THAT EMPLOYEE WAS WORKING FOR SBA. CIVIL PENALTIES WOULD BE IMPOSED FOR ANY VIOLATION. WHILE THE IDEA TO PROHIBIT AND PENALIZE CONFLICTS OF INTEREST IS A GOOD ONE, THE BILL IS A BIT EXTREME IN ITS APPLICATION. FIRST, THE SBA AGREES THAT NO CURRENT SBA EMPLOYEE SHOULD OWN STOCK IN ANY PARTICIPATING 8(a) CONCERN. AN EXCEPTION MIGHT BE WARRANTED FOR STOCK ACQUIRED BY WILL OR INHERITANCE. HOWEVER, WE BELIEVE THAT FORMER SBA EMPLOYEES THAT HAVE NEVER BEEN ASSOCIATED WITH OR WORKED WITH THE 8(a) PROGRAM SHOULD BE SUBJECT TO LESS STRINGENT LIMITATIONS THAN FORMER EMPLOYEES OF THE OFFICE OF MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT AND FORMER EMPLOYEES WHO EXERCISED JUDGMENT, CONTROL OR AUTHORITY IN THE 8(a) PROGRAM. WE ALSO BELIEVE THAT FIVE YEARS IS TOO LONG A PERIOD OF TIME FOR ANY FORMER SBA EMPLOYEE. SUCH A TIME PERIOD GOES FAR BEYOND NORMAL LIMITATIONS ON POST-EMPLOYMENT ACTIVITIES. THE GUIDELINES ESTABLISHED BY THE ETHICS IN GOVERNMENT ACT SHOULD BE FOLLOWED IN THIS INSTANCE.

POLITICAL APPOINTEES

WITH THE EXCEPTION OF THE ADMINISTRATOR AND DEPUTY ADMINISTRATOR, THE BILL WOULD PROHIBIT ALL POLITICAL APPOINTEES

EMPLOYED BY SBA FROM PARTICIPATING IN THE MANAGEMENT OF THE 8(a) OR 7(j) PROGRAM OR SUPERVISING ANYONE WHO DOES PARTICIPATE IN SUCH MANAGEMENT. THE SBA STRONGLY OPPOSES SUCH A PROVISION. THE ASSUMPTION THAT POLITICAL APPOINTEES EMPLOYED BY THE SBA ARE MORE SUSCEPTIBLE TO CORRUPTION OR UNFIT TO MANAGE THE 8(a) AND 7(j) PROGRAMS IS A PERSONAL AFFRONT TO YOU AND TO ME AS PUBLIC OFFICIALS AND IS UNSUPPORTABLE. IN ADDITION, IT IS THE PROVINCE OF THE EXECUTIVE BRANCH, IN THIS CASE THE SBA, TO DETERMINE WHICH OF ITS EMPLOYEES SHOULD PARTICIPATE IN, MANAGE OR SUPERVISE THE PERFORMANCE OF OTHERS IN EACH OF ITS AUTHORIZED PROGRAMS. THE POWER TO DETERMINE WHICH OFFICIALS WITHIN THE EXECUTIVE BRANCH SHOULD REVIEW AND MANAGE A PARTICULAR PROGRAM SHOULD REMAIN WITH THE HEAD OF THE AGENCY CONCERNED.

ACTIONS BASED ON POLITICAL MOTIVATIONS

THE BILL WOULD PROHIBIT ANY ACTION FROM BEING TAKEN, RECOMMENDED OR THREATENED BY ANY SBA EMPLOYEE, WITH RESPECT TO THE 8(a) AND 7(j) PROGRAMS, BASED UPON THE POLITICAL ACTIVITY OR AFFILIATION OF ANY PARTY. SBA AGREES WITH SUCH A PROVISION, BUT BELIEVES IT TO BE UNNECESSARY BECAUSE SUCH PREFERENTIAL OR NON-PREFERENTIAL TREATMENT, AS THE CASE MAY BE, IS CURRENTLY PROHIBITED BY SBA'S STANDARD OF CONDUCT REGULATIONS. IF SUCH A PROVISION IS DEEMED NECESSARY, THE SBA BELIEVES THAT IT SHOULD BE BROADENED TO INCLUDE ALL GOVERNMENT EMPLOYEES.

REPORTING TO THE INSPECTOR GENERAL

THE BILL WOULD REQUIRE 8(a) PARTICIPANTS TO REPORT TO SBA'S INSPECTOR GENERAL THE NAMES AND COMPENSATION PAID TO ALL AGENTS, REPRESENTATIVES, ATTORNEYS, ACCOUNTANTS, AND CONSULTANTS TO HELP THE FIRM OBTAIN FEDERAL CONTRACTS. THE SBA SUPPORTS SUCH A REPORTING REQUIREMENT, BUT QUESTIONS WHY THE REPORT WOULD AUTOMATICALLY GO TO THE INSPECTOR GENERAL. SUCH A REPORT SHOULD GO TO THE SBA FIELD OFFICE INVOLVED WITH THE PARTICULAR 8(a) CONTRACT. THE INSPECTOR GENERAL SHOULD BE INVOLVED ONLY WHERE IMPROPRIETIES ARE SUSPECTED.

LIMITATIONS ON CONTRACTS AND CONTRACT OPTIONS

SUBJECT TO A LIMITED EXCEPTION, THE BILL WOULD PROHIBIT 8(a) CONTRACTS FROM BEING AWARDED OR OPTIONS FROM BEING EXERCISED UNLESS ADEQUATE ASSURANCES ARE MADE THAT THE DISADVANTAGED OWNERS WILL MAINTAIN OWNERSHIP AND CONTROL THROUGHOUT THE TERM OF SUCH CONTRACT OR OPTION. THE SBA AGREES THAT THE SALE OF 8(a) CONCERNS, INCLUDING THE AWARDED 8(a) CONTRACTS, TO NON-8(a) CONCERNS IS BECOMING AN INCREASING PROBLEM. SBA HAS RECOGNIZED THIS PROBLEM AND HAS DRAFTED PROPOSED LANGUAGE TO BE INCLUDED IN ITS 8(a) REGULATIONS AND IN THE SPECIAL PRIME AND SUBCONTRACT CLAUSES INSERTED INTO EACH 8(a) AWARD THAT WOULD ADDRESS THE PROBLEM. BASICALLY, SBA WOULD REQUIRE 8(a) CONTRACTS TO BE PERFORMED, IN THEIR ENTIRETY, BY 8(a)

CONCERNS. IN OTHER WORDS, SBA WOULD INHIBIT THE SALE OR ASSIGNMENT OF 8(a) CONTRACTS TO NON-8(a) CONCERNS. IF A SALE OF AN 8(a) CONCERN DID OCCUR, ANY REPROCUREMENT COSTS INVOLVED IN TRANSFERRING THE PERFORMANCE OF THE CONTRACT TO ANOTHER 8(a) CONCERN CAPABLE OF PERFORMING THE CONTRACT WOULD BE BORNE BY THE FORMER 8(a) PARTICIPANT AND/OR THE PURCHASING CONCERN. ALTHOUGH THE SBA CANNOT PREVENT THE TRANSFERS OF PRIVATE PROPERTY (BY THIS I MEAN RESTRICTIONS ON THE TRANSFER OF THE 8(a) CONCERN OR ITS STOCK), WE DO BELIEVE THAT WE CAN AND SHOULD REQUIRE CONTRACT PERFORMANCE BY THE 8(a) CONCERN TO SATISFY THE PURPOSES UNDERLYING THE AWARD.

CRIMINAL FINES

THE BILL WOULD RAISE THE CRIMINAL PENALTY FOR FALSE REPRESENTATIONS OF A CONCERN'S STATUS AS A SMALL BUSINESS OR AS A SMALL DISADVANTAGED BUSINESS FROM THE PRESENT \$50,000 TO \$300,000. THE SBA AGREES WITH THIS PROVISION AND SUPPORTS THE EFFORT TO DETER "FRONT COMPANIES."

CONGRESSIONALLY MANDATED INVESTIGATIONS

THE BILL WOULD REQUIRE THE SBA'S INSPECTOR GENERAL TO CONDUCT AN INVESTIGATION ON ANY ACTIVITY ARISING UNDER THE 8(a) OR 7(j) PROGRAMS IF REQUESTED TO DO SO BY EITHER THE HOUSE OR SENATE COMMITTEE ON SMALL BUSINESS. I UNDERSTAND THAT THE DEPARTMENT

OF JUSTICE HAS OPPOSED THIS PROVISION ON CONSTITUTIONAL GROUNDS. THE SBA OPPOSES SUCH A REQUIREMENT ON POLICY GROUNDS. WHILE ANY INFORMATION REGARDING WRONGDOING IN THESE PROGRAMS WOULD BE GREATLY APPRECIATED BY THE SBA, THE INSPECTOR GENERAL SHOULD HAVE THE DISCRETION OF WHETHER TO INITIATE AN INVESTIGATION UPON RECEIVING THE INFORMATION. CONGRESS CURRENTLY HAS THE AUTHORITY TO INVESTIGATE PERCEIVED IMPROPRIETIES THROUGH THE COMMITTEE STRUCTURE AND THROUGH THE GENERAL ACCOUNTING OFFICE.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Appendix I

Provisions and Initiatives in the Section 8(a)
Program to Prevent and/or Identify Instances
of Fraud, Waste and Mismanagement

1. Establishment of stronger requirements concerning the contents of Business Plans and their effect on the scope of a program participants participation in the 8(a) program:
 - a. Requirement that the concern identify a primary Standard Industrial Classification (SIC) code and those related SIC codes in which it is competent to perform. §124.207
 - b. Procedures for approval of changes in either primary or secondary SIC codes. §124.207(b)
 - c. Approval of only those contracts carrying SIC codes approved by SBA for the particular participant concern. §124.207(c)
 - d. Limitation of contract support levels to no more than 25% above the approved level in the business plan. §124.301(b)
2. New requirements related to compliance with size standards contained in 13 C.F.R. Part 121:
 - a. Applicant concerns must be found to be small under each SIC code in their proposed business plans at the time of program admission. §124.102
 - b. Participant concerns must certify themselves as small for each contract to be awarded. §124.102
 - c. SBA will verify the size of the participant concern within 30 days of certification. §124.301(c).
3. Clarification and tightening of certain eligibility requirements:
 - a. Reinstitution of the two year in business rule for admission into the program, which excludes start-up businesses whose existence depends upon admission into the program. SOP 80 05 1, ¶7e(3)
 - b. Requirement that the disadvantaged individual(s) upon whom eligibility is based own 51 percent of all classes of stock. §124.103(a), SOP 80 05 1, ¶7b
 - c. Inclusion in the regulation of limitations on ownership interests in program participants by non-disadvantaged individuals and by firms in the same line of business. §124.103(c) and (d)
 - d. Inclusion in the regulation of the requirement and procedures for making character determinations at the time of program admission. §124.108
 - e. Inclusion in the regulation of exclusion of brokers and packagers, and of debarred or suspended individuals and concerns. §124.109

4. Establishment of a mechanism for public reporting of information suggesting fraud by applicants for admission to the program. §124.101(b)
5. Establishment of a program suspension mechanism, which includes suspension based on criminal indictment. §124.113
6. Inclusion in the regulation of subcontracting limitations to enhance their enforceability. §124.302(b)
7. Enhanced controls over approval, disbursement and collection of advance payments:
 - a. Establishment of approval procedures paralleling those contained in the Federal Acquisition Regulations which require consideration of certain information and which clearly assign responsibility to particular officials. §124.401(a)-(b), SOP 80 05 1, ¶77-80
 - b. Establishment of more stringent monitoring requirements including assignment of responsibility to SBA's contracting officer and his or her technical representative. §124.401(c), SOP 80 05 1, ¶81-82
 - c. Development of contract clauses which more clearly set out duties and responsibilities of the procuring agency, SBA and the 8(a) concern in disbursement and repayment of advance payment funds, and which make clear that SBA shall administer the advance payments. SOP 80 05 1, ¶81 and Appendices 37 and 38
 - d. Establishment of collection procedures for unliquidated advance payments. SOP 80 05 1, ¶83
8. Enhanced procedures for approval and monitoring of Business Development Expense. §124.402, SOP 80 05 1, ¶¶84-90



STATEMENT OF
JOHN F. MOFFITT
ASSOCIATE DEPUTY ADMINISTRATOR
FOR MANAGEMENT & ADMINISTRATION
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES
SEPTEMBER 29, 1987

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM PLEASED TO HAVE THIS OPPORTUNITY TO DISCUSS THE SMALL BUSINESS ADMINISTRATION'S MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAMS, AND IN PARTICULAR TO RESPOND TO YOUR QUESTIONS CONCERNING THESE PROGRAMS AND TO PRESENT THE AGENCY'S VIEWS ON H.R. 1807 AS REPORTED.

AS YOU KNOW, THE SBA'S ADMINISTRATOR, JAMES ABDNOR, AND ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT, WILFREDO GONZALEZ, HAVE PREVIOUSLY

TESTIFIED BEFORE THIS COMMITTEE'S SUBCOMMITTEE ON PROCUREMENT, INNOVATION, AND MINORITY ENTERPRISE DEVELOPMENT ON AN EARLIER VERSION OF H.R. 1807. WHILE THE BILL, AS REPORTED, IS AN IMPROVEMENT OF THAT EARLIER VERSION, IT STILL CONTAINS SEVERAL PROVISIONS THAT THE SBA CANNOT SUPPORT.

IN GENERAL, THE BILL STILL SEEKS TO PLACE TOO MUCH OF THE RESPONSIBILITY FOR DEVELOPING SUCCESSFUL 8(a) FIRMS ON THE FEDERAL GOVERNMENT. THE 8(a) PROGRAM CANNOT DO THIS BECAUSE SBA DOES NOT EXERCISE CONTROL OVER 8(a) FIRMS. NOR SHOULD IT. INSTEAD THE PROGRAM SHOULD BE VIEWED AS OFFERING AN OPPORTUNITY FOR MINORITY ENTREPRENEURS, WHO HAVE SUFFERED THE ILL EFFECTS OF SOCIAL AND ECONOMIC DISADVANTAGE, TO BENEFIT FROM THE ASSISTANCE PROVIDED AND TO SUCCEED IN THEIR ENDEAVORS. WE SHOULD NOT LOSE SIGHT OF THE FACT THAT THE RESPONSIBILITY TO BUILD SUCCESSFUL BUSINESSES RESTS WITH THESE OWNERS, NOT THE FEDERAL GOVERNMENT. IT IS SBA'S RESPONSIBILITY TO ASSURE THAT THE ASSISTANCE PROVIDED IS BOTH EFFECTIVE AND EQUITABLE.

THE BILL WOULD ADD, AMONG OTHER THINGS, A NEW PARAGRAPH 8(a)(19) TO THE SMALL BUSINESS ACT. THIS NEW PARAGRAPH WOULD PROHIBIT EMPLOYEES OF THE SBA WHO ARE EXCEPTED FROM THE

COMPETITIVE SERVICE, WITH THE EXCEPTION OF THE ADMINISTRATOR AND DEPUTY ADMINISTRATOR, FROM PLANNING, DIRECTING, CONTROLLING, CONDUCTING, OR PARTICIPATING IN ANY PROGRAM ACTIVITY CONDUCTED UNDER THE AUTHORITY OF SECTION 8(a) OR SECTION 7(j) OF THE SMALL BUSINESS ACT. THE SBA STRONGLY OBJECTED TO THIS PROVISION IN THE INITIAL VERSION OF H.R. 1807 AND CONTINUES TO OPPOSE IT. WE CANNOT SUPPORT ANY BILL WHICH CONTAINS SUCH A PROVISION. SENATOR ABDNOR HAS TESTIFIED THAT THE ASSUMPTION THAT POLITICAL APPOINTEES EMPLOYED BY THE SBA ARE MORE SUSCEPTIBLE TO CORRUPTION OR ARE UNFIT TO MANAGE THE 8(a) AND 7(J) PROGRAMS IS AN INSULT TO HIM AND IS UNSUPPORTABLE. WHETHER AN INDIVIDUAL IS SUSCEPTIBLE TO CORRUPTION DEPENDS ON THE MORAL FIBER OF THE INDIVIDUAL, NOT ON WHETHER HE/SHE IS A POLITICAL APPOINTEE OR A CAREER EMPLOYEE. THE ADMINISTRATOR'S TESTIMONY ALSO POINTED OUT THAT IT IS THE PROVINCE OF THE EXECUTIVE BRANCH, IN THIS CASE THE SBA, TO DETERMINE WHICH OF ITS EMPLOYEES SHOULD PARTICIPATE IN, MANAGE OR SUPERVISE THE PERFORMANCE OF OTHERS IN EACH OF ITS AUTHORIZED PROGRAMS. THE POWER TO DETERMINE WHICH OFFICIALS WITHIN THE EXECUTIVE BRANCH SHOULD REVIEW AND MANAGE A PARTICULAR PROGRAM SHOULD REMAIN WITH THE HEAD OF THE AGENCY CONCERNED.

SECOND, SECTION 5 OF THE BILL WOULD ESTABLISH THREE STAGES OF 8(a) PROGRAM PARTICIPATION: A DEVELOPMENTAL STAGE, A TRANSITIONAL STAGE, AND A MAINSTREAMING STAGE. THE BILL WOULD RESERVE CERTAIN PERCENTAGES OF A CONCERN'S APPROVED SUPPORT LEVEL FOR CONTRACTS TO BE AWARDED THROUGH COMPETITION AMONG OTHER 8(a) CONCERNS. THE BILL CALLS FOR 15 PERCENT TO BE RESERVED FOR SUCH COMPETITIVE CONTRACTS IN THE DEVELOPMENTAL STAGE OF 8(a) PARTICIPATION AND 40 PERCENT IN THE TRANSITIONAL STAGE. THE SBA SUPPORTS COMPETITION IN THE 8(a) PROGRAM AND THE ATTEMPT OF H.R. 1807 TO REQUIRE CERTAIN LEVELS OF COMPETITION IS LAUDATORY.

HOWEVER, WHILE IN THEORY THIS LEGISLATION WOULD PROVIDE COMPETITION WE FEEL THAT IN REALITY IT WOULD BE AN ADMINISTRATIVE NIGHTMARE AND MAY NOT RESULT IN MEANINGFUL COMPETITION.

REACHING A GIVEN MATHEMATICAL FORMULA MIGHT BECOME AN END IN ITSELF RATHER THAN A MEANS TO AN END. MSB'S MISSION TO DEVELOP COMPETITIVE SMALL BUSINESS MIGHT BECOME SUBORDINATED TO "BALANCING THE BOOKS".

WE FEEL THAT SIMPLICITY IN ADMINISTRATION OF THE PROGRAM IS ESSENTIAL TO SUCCESS. THIS SECTION OF THE BILL AS CURRENTLY WRITTEN WOULD BE COMPLICATED IN ACTUAL OPERATION AND DIFFICULT TO ADMINISTER.

WE ARE CONCERNED THAT BECAUSE OF THE DIFFICULTIES IN SETTING SUPPORT LEVELS FOR 8(a) FIRMS, THAT FIRMS MIGHT BE ABLE TO AVOID THE REQUIREMENTS FOR COMPETITION ESTABLISHED BY THE BILL. FOR EXAMPLE, IF SUPPORT LEVELS WERE SET HIGH ENOUGH, A FIRM COULD BE SATISFIED WITH SOLE SOURCE CONTRACTS EQUAL TO 85% OR 60% OF THE SUPPORT LEVEL. IN ADDITION, BECAUSE OF THE SMALL NUMBER OF 8(a) FIRMS AND THEIR GEOGRAPHIC DISTRIBUTION, COMPETITION AMONG 8(a) FIRMS MAY PROVE DIFFICULT TO ACHIEVE. THEREFORE, WE BELIEVE THAT THE REQUIREMENTS FOR COMPETITION NEED TO BE STRENGTHENED. ALTHOUGH SBA IS NOT ENDORSING ANY OF THESE, POSSIBLE ALTERNATIVES MIGHT BE EXPLORED INCLUDE: TYING 8(a) SOLE SOURCE CONTRACT SUPPORT DIRECTLY TO THE PREVIOUS YEAR'S COMPETITIVELY OBTAINED AND NON-8(a) CONTRACTS; BUILDING COMPETITIVELY OBTAINED CONTRACTS INTO THE FIRM'S BUSINESS PLAN AND MAKING SUBSTANTIAL NON-PERFORMANCE IN THIS AREA GROUNDS FOR TERMINATION FROM THE PROGRAM; ALLOWING ONLY A FIXED AMOUNT OF

SOLE SOURCE CONTRACT SUPPORT DURING THE ENTIRE PROGRAM PARTICIPATION AND, ONCE THIS ELIGIBILITY HAS BEEN USED UP, REQUIRING THE FIRM TO OBTAIN NON-SOLE SOURCE CONTRACTS IN ORDER TO REMAIN IN THE PROGRAM AND CONTINUE TO RECEIVE MANAGEMENT AND TECHNICAL ASSISTANCE; AND REQUIRING ALL CONTRACTS ABOVE A CERTAIN SIZE (OR SIZES, DEPENDING ON THE INDUSTRY) BE AWARDED THROUGH COMPETITION.

THIRD, INSTEAD OF BUSINESS DEVELOPMENT EXPENSE (BDE), THE BILL WOULD AMEND THE SMALL BUSINESS ACT, BY ADDING A NEW PARAGRAPH 7(j)(13), TO AUTHORIZE THE SBA TO "PURCHASE DEVELOPMENT INVESTMENTS" IN 8(a) CONCERNS IN THE TRANSITIONAL STAGE OF PROGRAM PARTICIPATION. WE ARE OPPOSED TO THE SBA PURCHASING EQUITY INTERESTS IN 8(a) CONCERNS. THE SBA, AND FOR THAT MATTER ANY GOVERNMENT INSTRUMENTALITY, SHOULD NOT OWN ANY INTEREST IN A PRIVATE COMPANY WHICH SEEKS ASSISTANCE FROM THAT INSTRUMENTALITY. CHARGES OF FAVORITISM TOWARD A PARTICULAR CONCERN COULD BE MADE WHERE A CONCERN IN WHICH THE SBA OWNS AN EQUITY INTEREST RECEIVES AN 8(a) AWARD INSTEAD OF AN 8(a) CONCERN IN WHICH THE SBA HAS NO SUCH INTEREST.

FOURTH, THE BILL WOULD AUTHORIZE THE SBA, IN NEWLY CREATED PARAGRAPH 7(j)(14) OF THE SMALL BUSINESS ACT, TO PROVIDE FINANCIAL, TECHNICAL, AND MANAGEMENT ASSISTANCE TO 8(a)

CONCERNS IN THE MAINSTREAMING STAGE OF PROGRAM PARTICIPATION TO EXPLORE THE POSSIBILITY AND FEASIBILITY FOR THE PUBLIC TRADING OF SUCH CONCERN'S STOCK AND TO REDUCE THE FEES AND OTHER EXPENSES THAT WOULD BE INCURRED BY THE CONCERN THROUGH SUCH A PUBLIC SALE. WHILE MANAGEMENT AND TECHNICAL ASSISTANCE TO 8(a) CONCERNS TO EXPLORE THE POSSIBILITY AND FEASIBILITY OF GOING PUBLIC IS APPROPRIATE, THE SBA OPPOSES PROVIDING ANY FINANCIAL ASSISTANCE TO 8(a) CONCERNS FOR THAT PURPOSE.

FIFTH, SECTION 7(c) OF THE BILL WOULD REQUIRE THAT ALL APPLICATIONS FOR CERTIFICATION INTO THE 8(a) PROGRAM "BE PROCESSED ONLY BY EMPLOYEES IN THE COMPETITIVE SERVICE AND AT A LEVEL NO HIGHER THAN THE APPROPRIATE REGIONAL OFFICE." THE SBA OPPOSES THIS PROVISION FOR TWO REASONS. FIRST, AS I STATED EARLIER IN OPPOSITION TO SECTION 8(a) OF THE BILL, THE ASSUMPTION THAT CAREER EMPLOYEES CAN MORE OBJECTIVELY EVALUATE 8(a) APPLICATIONS THAN POLITICAL APPOINTEES IS UNSUPPORTABLE. THE SBA'S SECOND OBJECTION TO THIS PROVISION CONCERNS THE LEVEL AT WHICH THE ELIGIBILITY DETERMINATION WOULD BE MADE. WE DO NOT BELIEVE THAT THE CENTRAL OFFICE SHOULD BE ELIMINATED FROM THE ELIGIBILITY DETERMINATION. CONTINUING THE PRACTICE OF PROCESSING ALL CASES BY THE CENTRAL OFFICE IS THE ONLY WAY TO ENSURE PROGRAM CONSISTENCY AND UNIFORMITY. MERE MONITORING AND

REVIEWS OF FIELD OFFICES WOULD NOT ENSURE THE DESIRED CONSISTENCY IN PROGRAM ELIGIBILITY DETERMINATIONS. THUS, WE BELIEVE THAT THE CURRENT PROCESS SHOULD NOT BE CHANGED. NAMELY, THE FINAL ELIGIBILITY DETERMINATION SHOULD REMAIN WITH THE ASSOCIATE ADMINISTRATOR, AFTER OBTAINING THE RECOMMENDATIONS OF THE APPROPRIATE FIELD OFFICES AND THAT OF THE OFFICE OF PROGRAM ELIGIBILITY IN CENTRAL OFFICE.

SIXTH, THE BILL WOULD PROHIBIT THE AWARD OF AN 8(a) CONTRACT OR THE EXERCISE OF AN OPTION CONTAINED IN AN 8(a) CONTRACT UNLESS THE SBA RECEIVES A PRIOR WRITTEN CERTIFICATION THAT THE INDIVIDUALS FOUND TO BE SOCIALLY AND ECONOMICALLY DISADVANTAGED WILL MAINTAIN OWNERSHIP AND CONTROL OF SUCH CONCERN THROUGHOUT THE TERM OF PERFORMANCE OF SUCH CONTRACT OR OPTION. THE SBA SUPPORTS THIS PROVISION, BUT DOES NOT BELIEVE THAT IT GOES FAR ENOUGH. THE BILL SHOULD ADDRESS THE CONSEQUENCES OF SELLING AN 8(a) CONTRACT OR AN 8(a) CONCERN BEFORE AN 8(a) CONTRACT IS COMPLETELY PERFORMED. THE SBA BELIEVES THAT ANY 8(a) CONTRACT SHOULD BE CONSIDERED NULL AND VOID IF AN 8(a) CONCERN TRANSFERS OR ATTEMPTS TO TRANSFER THE CONTRACT TO ANY ENTITY PRIOR TO ITS COMPLETION UNLESS THE PROPOSED TRANSFEREE IS A CURRENT 8(a) PARTICIPANT, THE TRANSFER WOULD BE CONSISTENT WITH THE TRANSFEREE'S BUSINESS PLAN, AND THE CONTRACTING AGENCY CONSENTS TO THE TRANSFER. AN EXCEPTION TO THIS PROVISION SHOULD BE

ADDED WHICH WOULD PERMIT THE ADMINISTRATOR TO WAIVE ITS REQUIREMENTS WHERE THE HEAD OF THE PROCURING ACTIVITY DEMONSTRATES EXCEPTIONAL CIRCUMSTANCES INDICATING THAT DISRUPTION OF THE PERFORMANCE OF THE CONTRACT WOULD CAUSE THE PROCURING ACTIVITY IRREPARABLE INJURY. SHOULD AN 8(a) CONTRACT BE VOIDED BECAUSE OF SUCH A PROVISION, THE SBA BELIEVES THAT THE 8(a) CONTRACTOR AND/OR ANY SUCCESSOR IN INTEREST SHOULD BE LIABLE TO THE PROCURING AGENCY AND/OR SBA FOR ANY COSTS ASSOCIATED WITH PROCURING A SUBSTITUTE 8(a) CONTRACTOR TO COMPLETE PERFORMANCE OF THE 8(a) CONTRACT.

SEVENTH, WE BELIEVE THAT THE TRAINING PROVISIONS FOR 8(a) FIRM EMPLOYEES OR PROSPECTIVE EMPLOYEES IN THE BILL WOULD BE FAR TOO COSTLY AND THAT THIS FUNCTION SHOULD REMAIN THE PROVINCE OF THE DEPARTMENT OF LABOR UNDER JTPA.

EIGHTH, CONCERNING THE INTERNATIONAL TRADE PROVISION OF H.R. 1807, THE AGENCY BELIEVES THAT THIS FUNCTION SHOULD BE ADMINISTERED BY SBA'S OFFICE OF INTERNATIONAL TRADE IN COOPERATION AND COORDINATION WITH OTHER FEDERAL TRADE ASSISTANCE PROGRAMS.

LASTLY, RATHER THAN THE NINE YEARS PROVIDED BY THE BILL WE WOULD RECOMMEND A FIXED PARTICIPATION TERM OF SEVEN YEARS FOR ALL FIRMS ENTERING THE PROGRAM. THIS WOULD PROVIDE A DEGREE OF CERTAINTY FOR THE 8(A) FIRM WHICH CURRENTLY DOES NOT EXIST UNDER FPPT SYSTEM. WE BELIEVE THAT SEVEN YEARS OF SUPPORT IS ADEQUATE. THIS WILL PERMIT SBA TO ASSIST MORE FIRMS THAN IF A NINE YEAR TERM IS PERMITTED. PROVISIONS FOR TERMINATION FOR CAUSE MUST ALSO BE RETAINED.

MR. CHAIRMAN, I WOULD NOW LIKE TO ADDRESS THE SPECIFIC ISSUES IDENTIFIED IN YOUR LETTER OF INVITATION.

ON THE ISSUE OF THE AGENCY'S IMPLEMENTATION OF THE "ECONOMIC DISADVANTAGE" CRITERION ESTABLISHED BY SECTION 8(a)(6) OF THE SMALL BUSINESS ACT, THE SBA HAS INSTITUTED SEVERAL REQUIREMENTS AND PROCEDURES CONCERNING ECONOMIC DISADVANTAGE WHICH ARE SET FORTH IN SECTION 124.106 OF SBA'S REGULATIONS, TITLE 13 OF THE CODE OF FEDERAL REGULATIONS, AND PARAGRAPH 6c OF SBA'S STANDARD OPERATING PROCEDURE 80 05 1.

AS ADMINISTRATOR ABDNOR POINTED OUT IN HIS LETTER TO YOU, MR. CHAIRMAN, ON AUGUST 7, 1987 (ATTACHMENT 2), IN ORDER TO BE

ELIGIBLE TO PARTICIPATE IN THE 8(a) PROGRAM, AN APPLICANT CONCERN MUST BE OWNED AND CONTROLLED BY ONE OR MORE SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS. SECTION 8(a)(6) OF THE SMALL BUSINESS ACT, 15 U.S.C. SECTION 637 (a)(6), DEFINES ECONOMICALLY DISADVANTAGED INDIVIDUALS TO MEAN:

"SOCIALLY DISADVANTAGED INDIVIDUALS WHOSE ABILITY TO COMPETE IN THE FREE ENTERPRISE SYSTEM HAS BEEN IMPAIRED DUE TO DIMINISHED CAPITAL AND CREDIT OPPORTUNITIES AS COMPARED TO OTHERS IN THE SAME BUSINESS AREA WHO ARE NOT SOCIALLY DISADVANTAGED."

IN DETERMINING WHETHER AN APPLICANT CONCERN MEETS THE ECONOMIC DISADVANTAGE REQUIREMENT, SECTION 124.106 OF SBA'S 8(a) REGULATIONS SETS FORTH SEVERAL FACTORS TO BE CONSIDERED. THESE INCLUDE (1) THE PERSONAL FINANCIAL CONDITION OF THE DISADVANTAGED INDIVIDUALS UPON WHOM ELIGIBILITY IS TO BE BASED, (2) THE BUSINESS FINANCIAL CONDITION OF THE APPLICANT CONCERN, AND (3) THE ACCESS TO CREDIT AND CAPITAL OF THE APPLICANT CONCERN.

PARAGRAPH 6c(1)(a)ii OF THE ATTACHED SOP 80 05 1 WAS INTENDED TO SERVE AS A GUIDELINE FOR DETERMINING ONE ASPECT OF THE ECONOMIC DISADVANTAGE REQUIREMENT (i.e., THE PERSONAL FINANCIAL CONDITION OF THE DISADVANTAGED INDIVIDUALS UPON WHOM ELIGIBILITY

IS TO BE BASED). IT DOES NOT ADDRESS THE OTHER COMPONENTS OF THIS REQUIREMENT (e.g., THE BUSINESS FINANCIAL CONDITION OF THE APPLICANT CONCERN OR THE APPLICANT CONCERN'S ACCESS TO CREDIT AND CAPITAL). THE APPLICANT CONCERN MUST DEMONSTRATE THAT THESE OTHER REQUIREMENTS ARE MET BEFORE BEING CONSIDERED ECONOMICALLY DISADVANTAGED.

IN ADDITION, THE SOP CLEARLY STATES THAT "EACH INDIVIDUAL'S NET WORTH MUST BE EVALUATED ON A CASE-BY-CASE BASIS" AND THAT "REGARDLESS OF A PARTICULAR INDIVIDUAL'S NET WORTH, HOWEVER, SUCH INDIVIDUALS MAY NOT BE ECONOMICALLY DISADVANTAGED, DEPENDING ON THE AMOUNT AND FORM OF THE PERSONAL INCOME, THE NATURE OF THE ASSETS AND THE TYPE AND NEEDS OF THE BUSINESS ACTIVITY." THESE STATEMENTS INDICATE THAT THE SBA REQUIRES SOME SHOWING OF PERSONAL FINANCIAL DISADVANTAGE AND THAT THE \$750,000 FIGURE IS NOT MEANT TO BE AN ABSOLUTE CUTOFF POINT.

THE SBA SHARES YOUR CONCERN REGARDING THE \$750,000 FIGURE AND BELIEVES THAT THE FIGURE SHOULD BE LOWERED. IN FISCAL YEAR 1986, 616 NEW FIRMS WERE ADMITTED TO THE 8(a) PROGRAM. THE AVERAGE PERSONAL NET WORTH OF THE INDIVIDUALS UPON WHOM ELIGIBILITY OF THESE FIRMS WAS BASED WAS \$120,966.32. A GUIDELINE OF \$250,000-\$300,000 SEEMS TO BE MORE REASONABLE THAN

THE \$750,000 FIGURE CURRENTLY CONTAINED IN THE SOP, AND WOULD NOT APPRECIABLY DECREASE THE NUMBER OF 8(a) FIRMS BEING ADMITTED TO THE 8(a) PROGRAM. WHATEVER MINIMUM FIGURE IS USED, HOWEVER, IT IS IMPORTANT TO PROVIDE A WAIVER PROVISION TO DEAL WITH THOSE SITUATIONS WHERE ASSETS ARE OF SUCH A NATURE TO WARRANT EXCEPTION.

IN ORDER TO PREVENT 8(a) PARTICIPATION FROM BEING A PART-TIME OR ANCILLARY ACTIVITY FOR THE DISADVANTAGED INDIVIDUALS WE COULD REQUIRE THE INDIVIDUALS UPON WHOM 8(a) PROGRAM PARTICIPATION IS TO BE BASED TO INVEST A CERTAIN PROPORTION OF THEIR PERSONAL ASSETS INTO THE APPLICANT CONCERN IN ORDER FOR THE CONCERN TO BE ELIGIBLE FOR PROGRAM ENTRY. THIS APPROACH WOULD REQUIRE THESE INDIVIDUALS TO HAVE A PERSONAL ECONOMIC STAKE IN THE 8(a) CONCERN.

WITH RESPECT TO HOW SBA WOULD IMPLEMENT THE PROVISIONS OF H.R. 1807 THAT (A) REQUIRE COMPETITION IN THE AWARD OF 8(a) CONTRACTS; (B) REQUIRE THAT 8(a) AWARDS, EXPRESSED AS A PERCENT OF TOTAL SALES, SHALL DECREASE OVER TIME AT A REASONABLY CONSISTENT RATE; AND (C) REQUIRE THE ESTABLISHMENT OF A SUPPORT LEVEL BELOW THE SIZE STANDARD FOR THE PRIMARY BUSINESS ACTIVITY OF THE FIRM, WE SUGGEST THE FOLLOWING:

ADMINISTRATIVELY IT WOULD BE IMPOSSIBLE TO DETERMINE AT THE BEGINNING OF A FISCAL YEAR WHAT LEVEL OF NON 8(a) CONTRACTS WOULD ACTUALLY BE ACHIEVED FOR THE ENTIRE YEAR.

IT WOULD APPEAR THAT THE ONLY WAY TO FACILITATE A BETTER 8(a) NON 8(a) MIX WOULD BE A PHASED TO PERCENTAGE REDUCTION IN 8(a) SUPPORT BEGINNING AT SOME POINT DURING THE 8(a) FIRM'S TENURE IN THE PROGRAM.

SBA COULD REVIEW CONTRACT OFFERINGS TO DETERMINE THOSE WHICH WOULD BE APPROPRIATE FOR THE 8(a) COMPETITION PROCESS. AFTER A JOINT DETERMINATION BY SBA AND THE PROCURING ACTIVITY THAT A REQUIREMENT IS APPROPRIATE FOR 8(a) COMPETITION, THE PROCURING ACTIVITY COULD PREPARE A SOLICITATION AND HAVE THIS SOLICITATION MAILED TO A LIST OF 8(a) CONTRACTORS PREPARED AND MAINTAINED BY THE SBA.

SINCE SBA IS RESPONSIBLE FOR THE ESTABLISHMENT OF SUPPORT LEVELS, SBA WILL SET THESE LEVELS ACCORDING TO THE SIZE STANDARDS AND ADHERE TO THEM.

(2) YOUR SECOND QUESTION PERTAINED TO "WHAT SBA WOULD DO TO ENSURE THAT 8(A) FIRMS MAKE SUBSTANTIAL EFFORT TO SECURE CONTRACTS COMPETITIVELY" IF H.R. 1807 IS ENACTED, AS REPORTED.

BY ENCOURAGING THE FIRM TO PLACE A GREATER EMPHASIS ON BUSINESS DEVELOPMENT AND MANAGEMENT INCLUDING MARKETING, GRADUALLY REDUCING THE LEVEL OF 8(A) SUPPORT, AND PROPOSING TERMINATION ACTIONS, THE SBA COULD SIGNIFICANTLY ALTER THE EXISTING PROPORTION OF 8(a) CONTRACTS TO NON-8(a) CONTRACTS.

(3) IN RESPONSE TO "WHAT FURTHER PROVISIONS SHOULD BE ADDED TO H.R. 1807 TO PROTECT THE SMALL BUSINESS SET-ASIDE PROGRAM AND THE 8(A) PROGRAM FROM BEING "RAIDED" FOR REQUIREMENTS TO BE USED IN THE SECTION 1207 PROGRAM" WE OFFER THE FOLLOWING POSSIBILITY.

THE SBA NEEDS TO WORK OUT WITH THE DEPARTMENT OF DEFENSE PROTECTION FROM THE 1207 PROGRAM TO MINIMIZE ITS IMPACT ON 8(a) AND SMALL BUSINESS SET-ASIDES.

(4) WOULD IT BE FEASIBLE TO LEGISLATE SPECIFIC DOLLAR THRESHOLDS ABOVE WHICH ALL 8(A) CONTRACTS MUST BE COMPETED AMONG 8(A) FIRMS?

YES. SUCH LEVELS IN ORDER TO BE REASONABLE MIGHT HAVE TO BE DETERMINED ON AN INDUSTRY BY INDUSTRY BASIS USING THE HISTORY OF PAST 8(a) AWARDS AS A GUIDE.

(5) HOW DOES SBA PRESENTLY MEASURE THE SUCCESS OF THE PROGRAM AND WHAT DATA IS USED TO MAKE THAT JUDGEMENT?

AT PRESENT, SBA HAS NO MECHANISM FOR ACCURATELY MEASURING THE SUCCESS OF THE 8(A) PROGRAM. WE RECOGNIZE THE IMPORTANCE OF TRACKING 8(a) GRADUATES TO DETERMINE THEIR LEVEL OF SUCCESS AFTER EXITING THE PROGRAM. WE PROPOSE TO ACCOMPLISH THIS IN CONCERT WITH OUR DEVELOPMENT OF AN 8(a) DATA BASE. IN ADDITION, WE NEED TO DEVELOP BETTER WAYS TO MONITOR AND EVALUATE A FIRMS' PROGRESS WHILE THEY ARE IN THE PROGRAM.

(6) IS THERE AN EVEN DISTRIBUTION OF 8(A) CONTRACTS BY REGION, AND IF NOT, WHAT ACCOUNTS FOR THE DISCREPANCY?

THERE IS NOT NOW, NOR CAN THERE EVER BE, AN ABSOLUTE EVEN DISTRIBUTION OF 8(A) CONTRACTS BY REGION. THIS IS DUE TO A NUMBER OF FACTORS, INCLUDING THE UNEVEN DISTRIBUTION OF PROGRAM PARTICIPANTS, THE UNEVEN DISTRIBUTION OF FEDERAL PROCURING

ACTIVITIES, THE VARIABLE NATURE OF REGIONAL 8(a) PORTFOLIOS, AND THE SKILL LEVEL OF MSB IN A GIVEN REGION. THE AGENCY CAN AND SHOULD STRIVE FOR A MORE EQUITABLE, RELATIVE DISTRIBUTION OF 8(a) CONTRACTS.

(7) IS THERE A POSITIVE CORRELATION BETWEEN THE LENGTH OF PROGRAM PARTICIPATION AND THE ABILITY OF 8(A) CONCERNS TO (A) SECURE LARGER 8(A) AWARDS, AND (B) BECOME LESS DEPENDENT ON 8(A) CONTRACTS, EXPRESSED AS A PERCENTAGE OF THEIR OVERALL SALES?

(A) NO ANALYSIS OF THE CORRELATION BETWEEN PROGRAM TENURE AND THE ACQUISITION OF LARGER 8(A) AWARDS EXISTS. WHILE GREATER LENGTH IN THE PROGRAM FREQUENTLY PROVIDES THE OPPORTUNITY FOR LARGER 8(a) CONTRACT AWARDS IT OFTEN CAN MEAN GREATER 8(a) DEPENDENCE.

(B) NO ANALYSIS OF THE CORRELATION BETWEEN PROGRAM TENURE AND A DECREASING DEPENDENCY ON 8(A) CONTRACTS EXISTS. WHILE SOME FIRMS HAVE BEEN ABLE TO DECREASE THEIR 8(a) DEPENDENCE DURING A LONG TENURE IN THE PROGRAM, OTHERS HAVE BECOME ALMOST TOTALLY DEPENDENT ON 8(a) CONTRACTS.

(8) WHAT MEASURES CAN SBA TAKE, THAT IT HAS NOT TAKEN BEFORE, TO ENSURE THAT THE 8(A) PROGRAM IS NOT USED TO MERELY AGGREGATE THE WEALTH OF BUSINESS OWNERS RATHER THAN ESTABLISH COMPETITIVE SMALL BUSINESSES?

WE DO NOT NECESSARILY AGREE THAT THE AGGREGATION OF PERSONAL WEALTH AND THE ESTABLISHMENT OF COMPETITIVE SMALL BUSINESSES ARE MUTUALLY EXCLUSIVE. INCREASED PERSONNAL WEALTH IS CERTAINLY NOT OBJECTIONABLE IN AND OF ITSELF, AND IS FREQUENTLY AN INDICATION OF A BUSINESS WHICH HAS REACHED A COMPETITIVE LEVEL. HOWEVER, IN ADMINISTERING THE PROGRAM SBA MUST KEEP IN MIND THAT DEVELOPING A VIABLE BUSINESS IS THE TRUE GOAL OF THE PROGRAM.

(9) ARE 8(A) SUPPORT LIMITATIONS APPROVED BY SBA WITH THE INTENT TO GRADUALLY DECREASE THE DEPENDENCE OF 8(A) FIRMS ON 8(A) CONTRACT AWARDS?

THEORETICALLY YES, BUT THERE IS CURRENTLY LITTLE UNIFORMITY TO THIS PROCESS AND LIMITATIONS ARE COMMONLY INCREASED OR IGNORED IF ADDITIONAL SUPPORT IS AVAILABLE.

IN CONCLUSION, MR. CHAIRMAN, THE MSB/COD PROGRAMS, INCLUDING 8(A), NEED SUBSTANTIAL IMPROVEMENT IF IT IS TO REALIZE THE GOALS AND OBJECTIVES ORIGINALLY ESTABLISHED FOR IT.

WE NEED TO ENCOURAGE 8(a) FIRMS TO PLACE A GREATER EMPHASIS ON GENUINE BUSINESS DEVELOPMENT AND THE NEED FOR IMPROVED BUSINESS EDUCATION.

AS STATED, SOME FORM OF COMPETITION MUST ALSO BE INTRODUCED INTO 8(A) TO BETTER REFLECT THE "REAL WORLD" OF FEDERAL PROCUREMENT AND THE BUSINESS ENVIRONMENT, WHICH EVERY 8(A) FIRM MUST FACE AFTER GRADUATION.

THE AGENCY MUST ATTEMPT TO PROVIDE A MORE EQUITABLE GEOGRAPHIC DISTRIBUTION OF NATIONAL BUY CONTRACTS.

SBA MUST ALSO CHANGE ITS ATTITUDE TO MSB/COD STAFFING. TOO OFTEN PERSONNEL HAS BEEN ASSIGNED TO THE PROGRAM WITHOUT REGARD TO THEIR ABILITY TO PERFORM.

IT MUST ALSO BE RECOGNIZED THAT THE PORTFOLIO IS CHANGING, FIRMS CAPABLE OF PERFORMING INCREASINGLY SOPHISTICATED CONTRACTS ARE BECOMING A MAJOR PART OF THE ENTIRE PORTFOLIO. THIS DEVELOPMENT REQUIRES BETTER TRAINING OF MSB PERSONNEL SO THAT THEY MAY BE BETTER ABLE TO IDENTIFY CONTRACTING OPPORTUNITIES FOR HI-TECH FIRMS.

SBA MUST ALSO BECOME PRO-ACTIVE IN LOCATING AND SECURING CONTRACTS FROM THE VARIOUS PROCURING AGENCIES.

BETTER COORDINATION MUST BE PROVIDED BETWEEN MSB PERSONNEL AND SBA'S PROCUREMENT DIVISION. AGENCY COMMERCIAL MARKETING REPRESENTATIVES (C.M.R's) MUST BE MORE ACTIVE IN INTRODUCING 8(a) FIRMS TO CONTRACTING OPPORTUNITIES WITH THE MAJOR GOVERNMENT PRIME CONTRACTORS.

PROCESSING TIME FOR PROGRAM ENTRY AND PAPERWORK MUST BE REDUCED.

ABOVE ALL, A WAY MUST BE FOUND TO EXTEND THE BENEFITS OF THE MSB/COD PROGRAM TO MORE DISADVANTAGED FIRMS IN THE UNITED STATES.

UNDER OUR ADMINISTRATOR, JIM ABDNOR, SBA IS COMMITTED TO MAKING THESE AND OTHER NEEDED CHANGES IN THIS PROGRAM. ADDITIONAL RESOURCES HAVE BEEN ADDED IN CENTRAL OFFICE ALONG WITH THE REASSIGNMENT OF SOME EXPERIENCED AND CAPABLE SBA PERSONNEL.

WE WELCOME THE OPPORTUNITY TO WORK WITH YOU AND OTHER MEMBERS OF OUR HOUSE AND SENATE COMMITTEES TO FACILITATE THESE CHANGES AND TO PROVIDE MORE MEANINGFUL OPPORTUNITIES TO OUR NATION'S DISADVANTAGED OWNERS.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

ATTACHMENT I

S.O.P. CONTINUATION SHEET

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(3) Minority Group Inclusion

Applications for minority group inclusion may be submitted to SBA by representatives of a minority group in accordance with the provisions of 13 C.F.R. §124.105(d). The group must make an adequate demonstration that it has suffered chronic racial or ethnic prejudice or cultural bias by presenting persuasive written testimony and evidence. Inquiries concerning applications for minority group inclusion should be sent directly to the Office of Program Eligibility.

c. Economic Disadvantage

"For purposes of the section 8(a) program, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged." [13 C.F.R. 124.106].

(1) Factors to be Considered: [13 C.F.R. §124.106(b)]

"In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, consideration will be given to both the disadvantaged individual and the applicant concern with which he or she is affiliated. Factors to be analyzed, as well as the determination of whether the applicant concern is economically disadvantaged, depend upon the particular industry in which the applicant concern is involved." In determining whether economic disadvantage exists, the BOS shall consider the personal financial condition of the individual(s) upon whom eligibility is to be based, the business financial condition of the applicant concern, and the access to credit and capital of the applicant concern. The BOS shall also consider such other factors, related to the particular industry in which the applicant concern is involved which may be relevant in such determination.

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(a) <u>Personal Financial Condition of the Disadvantaged Individual.</u> i. This criterion is designed to assess the relative degree of economic disadvantage of the individual in comparison to other individuals, as well as the potential to capitalize or otherwise provide financial support to the business. The specific factors considered are: personal income for at least the past two years; total fair market value of all assets (except that the <u>equity</u> value of the individual's primary residence will be considered); and the net worth of all holdings of the individual." [13 C.F.R. §124.106(b)(1)]. ii. Each individual's net worth must be evaluated on a case-by-case basis. Generally, individuals having a net worth of less than \$750,000 will be considered to be economically disadvantaged, absent a clear showing to the contrary. Regardless of a particular individual's net worth, however, such individuals may not be economically disadvantaged, depending on the amount and form of the personal income, the nature of the assets and the type and needs of the business activity. Individuals with a net worth in excess of \$750,000 may be considered economically disadvantaged in appropriate cases, but such applications should document clearly the disadvantaged status.			
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(b) Business Financial Condition

i. Comparison with Other Businesses:

"This criterion is designed to evaluate liquidity, leverage, operating efficiency and profitability of the applicant concern using commonly accepted financial ratios and percentages. This evaluation will be used to provide a financial picture of a firm at a specific point in time in comparison to other concerns in the same business area who are not socially disadvantaged. These factors are considered as indicators of a firm's economic disadvantage relative to businesses owned by nonsocially disadvantaged individuals. Factors to be considered [in evaluating liquidity, leverage, operating efficiency and profitability] are: business assets, net worth, income and profit. Also, factors to be compared [in any such evaluation] include, but are not limited to: current ratios, quick ratios, inventory turnover; accounts receivable turnover; sales to working capital; returns on assets; debt-to-net worth ratio; percentage return on investment; percentage gross profit margin; and percentage return on sales." [13 C.F.R. §124.106(b)(2)].

ii. Evaluation Tool:

(A) In evaluating liquidity, leverage, operating efficiency and profitability, Appendix I, in conjunction with Dun & Bradstreet financial reports, will be utilized as a guide to determine the relative economic disadvantage of the

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applicant concern. An overall picture of the firm is drawn from comparing the applicant (in each of the factors set forth in ¶ (i) above) to other concerns in the same business area who are not socially disadvantaged.. (B) After comparing the applicant concern to other nondisadvantaged concerns in the same business area, an average financial condition of the applicant concern is obtained. Generally, firms falling within the poor category will be considered economically disadvantaged, while firms in the average to good range will be required to present, in their narrative statements, a preponderance of evidence establishing economic disadvantage. (c) <u>Access to Credit and Capital</u> i. "This criterion will be used to evaluate the ability of the applicant concern to obtain the external support necessary to operate a competitive business enterprise. The factors to be considered are: access to long-term financing; access to working capital financing; equipment trade credit; access to raw materials and/or supplier trade credit; bonding capability." [13 C.F.R. §124.106(b)(3)]. ii. In considering whether an applicant concern has the ability to obtain the external support necessary to operate a competitive business enterprise, SBA will consider the			
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personnel resources of the individuals upon whom eligibility is based. (2) <u>Additional Considerations:</u> (a) "A comparison will be made of the applicant concern's business and financial profile with profiles of businesses in the same or similar line of business and competitive market area. It is not the intent of the section 8(a) program to allow program participation to concerns owned and controlled by socially disadvantaged individuals who have accumulated substantial wealth, have unlimited growth potential and have not experienced or have overcome impediments to obtaining access to financing, markets and resources." [13 C.F.R. §124.106(b)(4)]. (b) However, it is not the intent of the 8(a) program to exclude participation by socially disadvantaged individuals who, while they may have achieved moderate financial success, still are unable to compete and grow on equal terms in the marketplace because traditional cultural, racial or social barriers are preventing access to usual sources of financing, markets, or other resources. d. <u>Good Character</u> (1) Good character is an eligibility requirement. SBA will look at the "character" of the applicant concern and that of its officers, directors, and principal owners. (2) <u>Individual Character Review</u> "If, during the processing of an application, adverse information is obtained from the section 8(a) program application or a credible source regarding criminal conduct by an individual applicant [i.e., the business entity itself, or one of the officers, directors, or principal owners of the concern], no further			
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U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Re: 1-2
WAB

ATTACHMENT II

AUG 7 1987

Honorable John J. LaFalce
Chairman, Committee on
Small Business
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for information relative to SBA's current Standard Operating Procedures (SOP) concerning the requirement of economic disadvantage in the 8(a) program.

As you know, in order to be eligible to participate in the 8(a) program, an applicant concern must be owned and controlled by one or more socially and economically disadvantaged individuals. Section 8(a)(6) of the Small Business Act, 15 U.S.C. §637(a)(6), defines economically disadvantaged individuals to mean "socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged."

In determining whether an applicant concern meets the economic disadvantage requirement, § 124.106 of SBA's 8(a) regulations, Title 13 of the Code of Federal Regulations, sets forth several factors to be considered, including (1) the personal financial condition of the disadvantaged individuals upon whom eligibility is to be based, (2) the business financial condition of the applicant concern, and (3) the access to credit and capital of the applicant concern.

Paragraph 6c(1)(a)ii of SOP 80 05 was intended to serve as a guideline for determining one aspect of the economic disadvantage requirement (i.e., the personal financial condition of the disadvantaged individuals upon whom eligibility is to be based). It does not address the other components of this requirement (e.g., the business financial condition of the applicant concern or the applicant concern's access to credit and capital). The applicant concern must demonstrate that these other requirements are met before being considered economically disadvantaged. The \$750,000 figure stated in the SOP is also not meant to definitively resolve the

question of personal financial disadvantage. It is intended to be a gauge as to the level of documentation needed to satisfy the requirement of personal financial disadvantage. More substantial documentation of personal financial disadvantage is required where an individual has a net worth in excess of \$750,000. This is not to say that an applicant need not provide documentation establishing his/her personal financial disadvantage where his/her net worth is less than \$750,000. However, a clear showing indicating that the individual is not economically disadvantaged is required in such instances in order to find the individual ineligible on this ground.

In addition, the SOP clearly states that "[e]ach individual's net worth must be evaluated on a case-by-case basis" and that "[r]egardless of a particular individual's net worth, however, such individuals may not be economically disadvantaged, depending on the amount and form of the personal income, the nature of the assets and the type and needs of the business activity." These statements indicate that the SBA requires some showing of personal financial disadvantage and that the \$750,000 figure is not meant to be an absolute cutoff point.

Immediately prior to the revision to SOP 80 05 in April 1987, the SBA had an informal guideline of \$1 million in determining personal financial disadvantage. Again, the dollar figure served only as a guideline for requiring substantial documentation in those instances where an individual's net worth exceeded such figure. This guideline was not written, but was utilized by many field personnel. The \$750,000 figure in the current SOP was an attempt to give some formal guidance to field personnel concerning determinations of economic disadvantage.

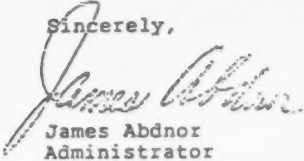
To my knowledge, no letters, memoranda, notes and/or writings exist that encourage or refer to the setting of this dollar level as a criterion in determining economic disadvantage. No verbal contacts with outside parties concerning this issue were held; no studies or analysis were utilized in establishing this figure. SOP 80 05, in its entirety, was approved by then Acting Administrator Charles Heatherly in March 1987.

I share your concern regarding the \$750,000 figure stated in SOP 80 05 and believe that the figure should be lowered. In fiscal year 1986, 616 new firms were admitted to the 8(a) program. The average personal net worth of the individuals upon whom eligibility of these firms was based was \$120,966.32. A table indicating the distribution of new 8(a) participants during fiscal year 1986 according to various net worths of their disadvantaged owners has been attached. It seems that a guideline of \$200,000-\$250,000 would be more reasonable than the \$750,000 figure currently contained in the SOP, and would not appreciably decrease the number of 8(a) firms being admitted to the 8(a) program.

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The Agency has identified a number of changes which need to be made to the section 8(a) regulations (13 C.F.R. Part 124). Any guideline figure for determining personal financial disadvantage established by the Agency should probably be included within such revision to the 8(a) regulations.

Sincerely,

A handwritten signature in dark ink, appearing to read "James Abdnor", is written over the typed name.

James Abdnor
Administrator

FY 1986

<u>NET WORTH CATEGORY</u>	<u>.</u>
\$0-49,999	220
\$50,000-99,999	149
\$100,000-199,999	150
\$200,000-299,999	37
\$300,000-399,999	34
\$400,000-499,999	12
\$500,000-599,999	7
\$600,000-699,999	4
\$700,000-799,999	1
\$800,000- OVER	2
	616

ESTIMATE: \$120,966.32



U.S. Small Business Administration
Washington, DC 20416

STATEMENT OF

WILFREDO J. GONZALEZ

ASSOCIATE ADMINISTRATOR

MINORITY SMALL BUSINESS & CAPITAL OWNERSHIP DEVELOPMENT

BEFORE THE

SUBCOMMITTEE ON PROCUREMENT, INNOVATION, AND

MINORITY ENTERPRISE DEVELOPMENT

COMMITTEE ON SMALL BUSINESS

HOUSE OF REPRESENTATIVES

June 4, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO HAVE THIS OPPORTUNITY TODAY TO DISCUSS THE SMALL BUSINESS ADMINISTRATION'S MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM (MSB&COD) AND TO PRESENT SBA'S VIEWS ON H.R. 1807. I WILL LIMIT MY COMMENTS TO THE BILL. THIS COMMITTEE WILL BE HEARING LATER FROM JAMES ABDNOR, SBA'S ADMINISTRATOR, WHO WILL PROVIDE GENERAL COMMENTS ON REFORM OF THE 8(a) PROGRAM.

THE PURPOSE OF THE BILL IS TO REFORM CERTAIN PROCEDURES IN SECTION 8(a) AND 7(j). WHILE WE ARE IN AGREEMENT THAT CERTAIN PROGRAM CHANGES ARE NECESSARY TO IMPROVE PROGRAM ADMINISTRATION AND PROGRAM IMAGE, WE BELIEVE THAT MANY OF THESE CHANGES CAN BE AND ARE BEING MADE ADMINISTRATIVELY. WE ARE IN FAVOR OF REFORMING THE PROGRAM, HOWEVER, WE CANNOT SUPPORT H.R. 1807 IN ITS CURRENT FORM.

THE BILL'S AMENDMENTS CREATE EXCEEDINGLY COMPLICATED AND COMPLEX CRITERIA FOR ENTERING AND PARTICIPATING IN THE 8(a) PROGRAM. IT SEEKS GREATER GOVERNMENTAL INVOLVEMENT IN THE AFFAIRS OF PRIVATE BUSINESS, WHERE LESS HAS BEEN SOUGHT BY THE ADMINISTRATION AND THE GENERAL PUBLIC. THE BILL REQUIRES A DRAMATIC INCREASE IN BUDGETARY RESOURCES, WHERE A REDUCTION IN THE BUDGET IS DESIRED. THE 8(a) ELIGIBILITY PARTICIPATION PROCESS IS COMPLICATED AND LENGTHENED BY THE BILL, AT A TIME WHEN THE PROCESS IS CONSIDERED BY SOME TO BE TOO COMPLEX AND TOO LONG. THE BILL SEEKS COMPETITIVENESS WHERE SUCH IS NOT THE ROLE OF THE GOVERNMENT: WE SHOULD PROVIDE OPPORTUNITIES, NOT GUARANTEE RESULTS.

THERE IS A PERCEPTION THAT THE PROGRAM IS FRAUGHT WITH ABUSES. IN ACTUALITY WE WOULD LIKE TO OFFER THE FOLLOWING:

OVER 600 FIRMS HAVE GRADUATED FROM THE 8(a) PROGRAM IN THE LAST FIVE YEARS. OF THESE, ONLY SEVEN HAVE BEEN ACQUIRED BY LARGE NON-DISADVANTAGED BUSINESSES.

IN ADDITION, OVER 4,000 FIRMS HAVE PARTICIPATED IN THE 8(a) PROGRAM IN THE LAST FIVE YEARS. WEDTECH IS THE ONLY FIRM THAT HAS COME TO OUR ATTENTION IN RECENT YEARS AS BEING SIGNIFICANTLY INVOLVED IN POLITICALLY INFLUENCED ACTIVITIES.

I WOULD LIKE TO PROVIDE YOU WITH AN OVERVIEW OF SOME OF THE THINGS WE HAVE DONE TO IMPROVE PROGRAM ADMINISTRATION AND PROGRAM IMAGE:

8(a) PROGRAM ELIGIBILITY

WE HAVE TAKEN MEASURES TO REDUCE THE TIME INVOLVED IN THE APPLICATION PROCESS. FOR INSTANCE, OUR RECENTLY PUBLISHED OPERATING PROCEDURES HAVE ESTABLISHED APPLICATION PROCESSING TIME FRAMES. FURTHER, HIGH 8(a) VOLUME DISTRICT OFFICES SUCH AS THE WASHINGTON DISTRICT OFFICE ARE ESTABLISHING ORGANIZATIONAL UNITS THAT WILL DEVOTE ALL OF THEIR TIME TO APPLICATION PROCESSING.

WE HAVE ALSO ESTABLISHED A REQUIREMENT THAT GENERALLY A PROGRAM APPLICANT MUST HAVE BEEN IN BUSINESS FOR TWO FULL YEARS. THIS REQUIREMENT WILL RESULT IN PROGRAM PARTICIPATION OF THOSE FIRMS THAT HAVE THE GREATEST POTENTIAL FOR SUCCESS.

BUSINESS DEVELOPMENT

WE ARE ALSO EVALUATING DIFFERENT METHODS TO ENSURE THAT THE PROGRAM PARTICIPANTS UNDERSTAND THE DEVELOPMENTAL NATURE OF THE MINORITY BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM; THAT THEY REALIZE THAT THE 8(a) CONTRACTING PROGRAM IS ONLY ONE PART OF THE PROGRAM THAT ADDRESSES THEIR NEEDS FOR MONEY, MANAGEMENT AND MARKETS.

THE PROBLEMS WE ARE ENCOUNTERING NOW ARE A DIRECT RESULT OF THIS ONE TOOL BEING VIEWED INSIDE AND OUTSIDE OF THE AGENCY AS THE ONLY TOOL. OTHER MARKETING TOOLS WHICH ARE JUST AS IMPORTANT, IF NOT MORE SO, ARE THE SMALL BUSINESS SET-ASIDE, THE LABOR SURPLUS AREA, THE SUBCONTRACTING 8(d) PROGRAMS, AND NOW THE COMPETITIVE SMALL DISADVANTAGED BUSINESS PROGRAM OF D.O.D. AN AGGRESSIVE PROGRAM TO WEAN THE MINORITY FIRMS IN OUR DEVELOPMENT PROGRAM AWAY FROM 8(a) AS THE ONLY TOOL FOR DEVELOPMENT AND A STRONG REDIRECTION TO THE OTHER SPECIAL MARKETS, THIS WILL GIVE THE MINORITY FIRM THE BALANCE THAT IT NEEDS.

THE POLICIES AND PROCEDURES WHICH GOVERN THE OPERATION OF THE 7(j) PROGRAM WERE TOTALLY REVAMPED OVER THE PAST 24 MONTHS. THE PROGRAM NOW ADDRESSES THE DEVELOPMENTAL NEEDS OF MINORITY FIRMS AS IDENTIFIED JOINTLY BY SBA'S BUSINESS OPPORTUNITY SPECIALIST AND THE FIRMS' OWNERS/MANAGERS.

WE HAVE DEVELOPED A SYSTEM WHICH AFFORDS OUR CLIENTS AN OPPORTUNITY TO VERIFY THE MANAGEMENT AND TECHNICAL ASSISTANCE SERVICES THEY RECEIVE AND EVALUATE THE QUALITY OF THESE SERVICES.

THIS NEW MONITORING SYSTEM IS A TREMENDOUS STEP FORWARD IN REORDERING THE ACCOUNTABILITY RELATIONSHIP OF OUR 7(j) CONSULTING FIRMS. WE HAVE ALSO INITIATED A PROGRAM WHEREBY 8(a) FIRMS IN THEIR TRANSITIONAL YEARS MAY SELECT THEIR OWN CONSULTANT FOR SPECIALIZED ASSISTANCE ON A SHARED COST BASIS WITH SBA.

FOR MORE EFFECTIVE PROGRAM IMPLEMENTATION AND EVALUATION, WE INTEND TO DO THE FOLLOWING:

MARKETING

WE ARE PRESENTLY REVIEWING A PROPOSED INCENTIVE PROGRAM ENDORSED BY THE PRESIDENTIAL ADVISORY COMMITTEE FOR MINORITY BUSINESS DEVELOPMENT, WHICH WILL GO A LONG WAY IN IMPROVING MINORITY SMALL BUSINESS' ACCESS TO PRIVATE SECTOR MARKETS. WE ARE ALSO REVIEWING PROPOSALS WHICH ARE INTENDING TO PROVIDE OPPORTUNITIES FOR MINORITY FIRMS TO MORE EASILY ACCESS FOREIGN MARKETS.

FINANCING

WE ARE STUDYING NEW WAYS TO ENCOURAGE GREATER PARTICIPATION OF PRIVATE FINANCIAL INSTITUTIONS IN THE FINANCING OF MINORITY SMALL BUSINESSES.

MONITORING

WE ARE DEVELOPING A COMPREHENSIVE MONITORING SYSTEM TO CONTINUE TO TRACK THE DEVELOPMENT OF FIRMS ONCE THEY LEAVE THE 8(a) PROGRAM.

NOW WE WOULD LIKE TO SHARE WITH YOU OUR OBJECTIONS TO THE BILL.

SECTION - 1

THIS SECTION PROVIDES THAT NO APPLICANT BUSINESS CONCERN SHALL BE DEEMED ELIGIBLE TO PARTICIPATE IN ANY PROGRAM CONDUCTED UNDER THE AUTHORITY OF SECTIONS 7(j)(10) OR 8(a) OF THE ACT UNLESS THE AA/MSB&COD DETERMINES THAT UPON APPLYING FOR PROGRAM ASSISTANCE THE CONCERN HAS ACHIEVED NOT LESS THAN 15% NOR MORE THAN 80% OF ITS CRITERIA OF COMPETITIVENESS.

RESPONSE

WE AGREE THAT PROGRAM APPLICANTS, AS PROVIDED FOR IN P.L. 95-507, SHOULD BE COMPARED TO OTHERS IN THE SAME BUSINESS AREA WHO ARE NOT SOCIALLY AND ECONOMICALLY DISADVANTAGED. RECENTLY PUBLISHED REGULATIONS REQUIRE A SIMPLIFIED COMPARISON USING DUN & BRADSTREET PUBLISHED DATA. THEREFORE, WE DON'T BELIEVE THAT A COMPARISON, FOR PURPOSES OF PROGRAM ENTRY, SHOULD BE MADE AGAINST THE COMPLICATED PREDETERMINED CRITERIA OF COMPETITIVENESS DESCRIBED IN SUBPARAGRAPH D OF THE BILL.

SECTIONS 2 & 3

SECTION 2 -- REQUIRES AN 8(a) BUSINESS PLAN TO CONTAIN TARGETS, OBJECTIVES AND GOALS DESIGNED TO OVERCOME THE FIRM'S ECONOMIC DISADVANTAGE, AS WELL AS PREDETERMINED "CRITERIA OF COMPETITIVENESS" FOR FINANCIAL, MANAGEMENT AND MARKETING FUNCTIONS SO THE PROGRESS TOWARD COMPETITIVENESS CAN BE MEASURED AND AN ESTIMATED GRADUATION DATE COMPUTED.

SECTION 3 -- ADDS SEVEN NEW SUBPARAGRAPHS TO SECTION 7(j)(10). DEFINES SUBPARAGRAPH (D) "CRITERIA OF COMPETITIVENESS" AS THOSE PREDETERMINED STANDARDS WHICH WOULD MAKE THE 8(a) FIRM COMPETITIVE WITH OTHER BUSINESS CONCERNS IN THE SAME GENERAL GEOGRAPHIC AREA, ENGAGED IN THE SAME/SIMILAR INDUSTRY AND WHICH ARE NOT OWNED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED PERSONS.

RESPONSE

PRESENT 8(a) BUSINESS PLANS SET FORTH FINANCIAL AND MARKETING TARGETS, OBJECTIVES AND GOALS. THE CURRENT BUSINESS PLAN DOES NOT CONTAIN PREDETERMINED CRITERIA FOR COMPETITIVENESS, NOR DOES IT CONTAIN MANAGEMENT TARGETS, OBJECTIVES AND GOALS. BY ESTABLISHING PARAMETERS, WE CAN ESTABLISH OBJECTIVE CRITERIA TO MAKE FINANCIAL COMPARISONS BETWEEN BUSINESSES OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED PERSONS AND THOSE BUSINESSES OWNED AND CONTROLLED BY NON-SOCIALLY AND ECONOMICALLY DISADVANTAGED PERSONS.

WE CAN ACCOMPLISH THIS BY USING REGULARLY PUBLISHED FINANCIAL STATEMENT STUDIES. THE MARKETING AND MANAGEMENT CRITERIA REQUIRED BY H.R. 1807 IS VIRTUALLY IMPOSSIBLE FOR US TO DEVELOP DUE TO THE ABSENCE OF DATA.

SECTION 4 - STAGES OF PROGRAM PARTICIPATION

ADDS FIVE NEW PARAGRAPHS TO SECTION 7(j) REGARDING THE DEVELOPMENTAL STAGE OF THE PROGRAM, SEVEN NEW PARAGRAPHS REGARDING THE TRANSITION STAGE AND THREE NEW PARAGRAPHS REGARDING PROGRAM GRADUATES. THIS SECTION WOULD ALSO EXTEND THE PERIOD OF PARTICIPATION IN THE PROGRAM FROM SEVEN TO FOURTEEN YEARS. IT WOULD TIE THE PERFORMANCE APPRAISAL SYSTEM APPLICABLE TO BUSINESS OPPORTUNITY SPECIALISTS TO THE PERFORMANCE OF THEIR PORTFOLIO OF 8(a) FIRMS.

RESPONSE

THE THREE-STAGE CONCEPT TO PROVIDE ASSISTANCE TO BUSINESSES BASED ON THEIR STAGE OF DEVELOPMENT IS A VALID APPROACH. HOWEVER, WE FIND THE CRITERIA IN SECTION 4 TOO IMPRACTICAL FOR EFFECTIVE IMPLEMENTATION. OTHER PROVISIONS WOULD CONSTITUTE INAPPROPRIATE FEDERAL ACTIVITY OR WOULD DEplete EXISTING PROGRAMS. FOR EXAMPLE, PROVIDING 14 YEARS OF ASSISTANCE TO THE POTENTIALLY ELIGIBLE DISADVANTAGED BUSINESS CONCERNS WOULD RESULT IN THE PORTFOLIO MANAGEMENT OF 4,000 TO 6,000 BUSINESS CONCERNS WHICH WOULD, IN

TURN, REQUIRE A DRAMATIC INCREASE IN PROGRAM RESOURCES TO ADMINISTER SUCH A PORTFOLIO. NOR DO WE AGREE WITH EXEMPTIONS FROM THE WALSH-HEALEY ACT AND THE MILLER ACT. SBA HAS THE AUTHORITY UNDER P.L. 99-567 TO WAIVE SURETY BOND REQUIREMENTS IF NECESSARY. HOWEVER, WE BELIEVE THAT IT IS DESIREABLE FOR FIRMS TO ESTABLISH "TRACK RECORDS" RATHER THAN HAVING BINDING REQUIREMENTS WAIVED. EXEMPTIONS FROM THESE PROVISIONS DO NOT PROVIDE ADEQUATE PROTECTION FOR THIRD PARTIES, IMPEDING THE 8(a) FIRM'S PREPARATION FOR THE COMPETITIVE ENVIRONMENT. ESPECIALLY GIVEN THE CURRENT DEFICIT SITUATION, WE DO NOT BELIEVE IT APPROPRIATE FOR THE FEDERAL GOVERNMENT TO PROVIDE FIRMS WITH GRANTS TO PROVIDE TRAINING TO THEIR EMPLOYEES OR PARTIALLY DEFRAY THE COST OF ISSUING PUBLIC SECURITIES. SBA, THROUGH ITS INTERNATIONAL TRADE PROGRAM AND THROUGH COOPERATION WITH OTHER FEDERAL TRADE RELATED AGENCIES, ALREADY PROVIDES ASSISTANCE TO FIRMS INTERESTED IN EXPORTING. WE DO NOT AGREE WITH "DEVELOPMENT INVESTMENTS". OWNERSHIP IN PRIVATE ENTERPRISE BY THE FEDERAL GOVERNMENT IS CONTRARY TO THE DOCTRINE OF FREE ENTERPRISE. FURTHER, SBA OWNERSHIP IN A BUSINESS WOULD RESULT IN SBA AS THE GOVERNMENT CONTRACTING WITH ITSELF AS BUSINESS OWNER. IT SHOULD BE NOTED THAT ANTI-TRUST EXEMPTIONS AS

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PROPOSED ARE IMPRACTICAL. WE DO NOT SUPPORT THE PROVISION ALLOWING GRADUATING 8(a) FIRMS A TEN PERCENT DIFFERENTIAL ABOVE THE LOW OFFERER'S BID AS THIS WILL INCREASE PROCUREMENT COSTS OF THE GOVERNMENT AND PROVIDE THESE FIRMS WITH A SPECIAL ADVANTAGE OVER OTHER SMALL AND SMALL DISADVANTAGED FIRMS.

WE DISAGREE THAT THE ADMINISTRATOR SHOULD ENSURE THAT THE PERFORMANCE APPRAISAL SYSTEM APPLICABLE TO BUSINESS OPPORTUNITY SPECIALISTS (BOS) INCLUDES SUBSTANTIAL RECOGNITION TO THE PROGRESS THEIR RESPECTIVE 8(a) PORTFOLIOS ARE MAKING TOWARD COMPETITIVENESS. A BOS CAN ONLY OFFER 8(a) CONTRACTING OPPORTUNITIES, 7(j) ASSISTANCE, AND MONITOR THE PROGRESS OF 8(a) COMPANIES. IT IS UP TO THE OWNERSHIP AND MANAGEMENT OF AN 8(a) COMPANY TO TAKE ADVANTAGE OF OPPORTUNITIES AND PURSUE COMPETITIVENESS. FURTHER, A BOS CANNOT ENSURE SUCCESSFUL AND PROFITABLE PERFORMANCE OF A CONTRACT. MOREOVER, H.R. 1807 MAY INDUCE A BOS INTO IMPROPER INFLUENCE OR EVEN BIAS PARTICIPATION IN MANAGEMENT AND THE DECISION-MAKING PROCESS OF AN 8(a) COMPANY.

SECTION 5 - APPEAL THE NON-RESERVATION OF CONTRACTS FOR 8(A) AWARD

AMENDS SECTION 8(a)(1) AND PROVIDES ADDITIONAL AUTHORITY FOR SBA TO APPEAL TO APPROPRIATE AGENCY HEAD A CONTRACTING OFFICER'S NEGATIVE DECISION REGARDING SELECTION OF A REQUIREMENT FOR AWARD.

RESPONSE

THIS PROVISION IS UNNECESSARY BECAUSE IT IS BEING HANDLED ADMINISTRATIVELY.

SECTION 6 - FAIR MARKET PRICES

AMENDS SECTION 8(a)(3) TO PROVIDE A FAIR MARKET PRICE FOR AWARD OF 8(a) CONTRACT BASED ON "REASONABLE COSTS UNDER NORMAL COMPETITIVE CONDITIONS."

RESPONSE

THIS PROVISION IS UNNECESSARY BECAUSE IT IS ALREADY COVERED BY THE FAR AND WE OPPOSE THE PROTEST PROCEDURE AS UNNECESSARY BECAUSE THE 8(a) FIRM ALREADY HAS RECOURSE UNDER EXISTING STATUTE (CICA).

SECTION 7 - STOCK OWNERSHIP

AMENDS SECTION 8(a) BY ADDING EIGHT NEW PARAGRAPHS.

SIZE STANDARDS

PARA 15 -- NO PORTION OF GROSS RECEIPTS OR EMPLOYMENT PERTAINING TO AN 8(a) CONTRACT SHALL BE TAKEN INTO ACCOUNT WHEN COMPUTING THE SIZE OF THE 8(a) FIRM FOR ANY ASSISTANCE AUTHORIZED UNDER THE SMALL BUSINESS ACT.

RESPONSE

DEALING WITH SIZE, IS WELL INTENDED, BUT WOULD PRESENT SBA WITH SERIOUS PROBLEMS WITH REGARD TO ITS MANDATE TO ASSIST ALL OF THE NATION'S SMALL BUSINESSES. BY TOTALLY EXCLUDING SALES AND/OR EMPLOYMENT ASSOCIATED WITH THE AWARD OF 8(a) CONTRACTS, A NEW APPROACH FOR ESTABLISHING SIZE WOULD BE ESTABLISHED WHICH CREATES A SIGNIFICANT ADVANTAGE FOR 8(a) FIRMS AND, AT THE SAME TIME, A SIGNIFICANT DISADVANTAGE FOR ALL NON-8(a) SMALL BUSINESSES.

CONTRACT MATCHING

PARA 16 -- IF A CONTRACT IS OFFERED TO SBA FOR AWARD UNDER 8(a) AND OFFERING AGENCY NOMINATES A FIRM TO PERFORM, SBA IS REQUIRED TO DESIGNATE THE FIRM TO NEGOTIATE FOR THE REQUIREMENT IF CERTAIN CONDITIONS ARE MET.

RESPONSE

WE AGREE THAT REQUIREMENTS OFFERED ON BEHALF OF AN 8(a) CONCERN SHOULD BE AWARDED TO THAT CONCERN. THIS IS GENERALLY SBA'S PRACTICE NOW. THEREFORE, WE DO NOT BELIEVE THAT FURTHER LEGISLATION IS NEEDED FOR THIS PRACTICE.

CONTRACT MATCHING

PARA 17 -- AUTHORIZES FIELD OFFICE IN RECEIPT OF REQUIREMENT TO DESIGNATE A FIRM TO NEGOTIATE FOR AWARD UNDER CERTAIN CONDITIONS.

RESPONSE

WE AGREE WITH EQUITABLE DISTRIBUTION OF OPEN REQUIREMENTS. THIS IS ALSO SBA'S PRACTICE NOW. THEREFORE, WE DO NOT BELIEVE THAT FURTHER LEGISLATION IS NEEDED FOR THIS PRACTICE.

STOCK OWNERSHIP

PARA 18 -- PROHIBITS ANY SBA EMPLOYEE FROM OWNING STOCK IN ANY 8(a) FIRM IN THE PROGRAM DURING THAT EMPLOYEE'S TERM OF EMPLOYMENT AND FOR FIVE YEARS AFTER SUCH TERM.

RESPONSE

WE AGREE THAT RESTRICTIONS OF STOCK OWNERSHIP BY SBA EMPLOYEES AND FORMER SBA EMPLOYEES ARE APPROPRIATE. ETHICS LAWS AND STANDARD OF CONDUCT REGULATIONS PROVIDE ADEQUATE SAFEGUARDS AGAINST CONFLICT OF INTEREST. THEREFORE, WE DO NOT SEE THE NEED FOR THE ENACTMENT OF THIS PROVISION. HOWEVER, WE BELIEVE THAT CURRENT SIMILAR RESTRICTIONS SHOULD BE APPLIED TO EMPLOYEES AND FORMER EMPLOYEES OF THE OFFICES OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION AND OTHER INDIVIDUALS WHOSE PROFESSIONAL RESPONSIBILITIES MAY ENABLE THEM TO HAVE AN IMPACT ON PROGRAM PARTICIPATION AND CONTRACT AWARD.

POLITICAL APPOINTEES

PARA 19 -- ADMINISTRATOR AND DEPUTY ADMINISTRATOR ARE ONLY TWO POLITICAL APPOINTEES WITHIN THE AGENCY WHO CAN MANAGE OR PARTICIPATE IN MANAGEMENT OF 8(a) OR 7(j) PROGRAMS.

RESPONSE

WE DO NOT AGREE THAT POLITICAL APPOINTEES OTHER THAN THE ADMINISTRATOR AND DEPUTY ADMINISTRATOR SHOULD BE PROHIBITED FROM MANAGING THE 8(a) OR 7(j) PROGRAMS, OR SUPERVISE ANYONE WHO DOES PARTICIPATE IN SUCH MANAGEMENT.

POLITICAL MOTIVATION

PARA 20 -- PRECLUDES ANY SBA EMPLOYEE WHO HAS AUTHORITY TO TAKE, DIRECT OTHERS TO TAKE, RECOMMEND OR APPROVE ANY ACTION WITH RESPECT TO 8(a) OR 7(j).

RESPONSE

WE AGREE THAT PROGRAM ACTIONS SHOULD NOT BE INFLUENCED BY POLITICAL MOTIVATIONS. HOWEVER, WE SUGGEST THAT THE LEGISLATION NOT ONLY PROVIDE FOR DISCIPLINARY ACTION AGAINST THE SBA EMPLOYEE BUT ALSO AGAINST THOSE PERSONS WHO POLITICALLY INFLUENCE THE EMPLOYEE.

REPORTING TO THE INSPECTOR GENERAL

PARA 21 -- EVERY 8(a) FIRM IS REQUIRED TO REPORT TO THE IG THE NAMES AND COMPENSATION PAID TO CERTAIN PERSONS RETAINED BY THE FIRM TO HELP IT SECURE FEDERAL CONTRACTS.

RESPONSE

WE AGREE WITH THE REQUIREMENTS TO REPORT FEES PAID TO AGENTS, REPRESENTATIVES, ETC. HOWEVER, WE FEEL THAT THESE REPORTS SHOULD BE MADE TO SBA'S FIELD OFFICE STAFF.

CONTRACTS AND CONTRACT OPTIONS

PARA 22 -- NO 8(a) CONTRACT OR OPTION AWARDED UNLESS SBA RECEIVES ADEQUATE ASSURANCES THAT DISADVANTAGED OWNERS WILL MAINTAIN OWNERSHIP AND CONTROL.

RESPONSE

WE AGREE WITH THE CONCEPT OF PLACING CERTAIN LIMITATIONS ON THE EXECUTION OF CONTRACTS AND CONTRACT OPTIONS. HOWEVER, WE BELIEVE THAT CONTRACT CLAUSES WILL ESTABLISH SUFFICIENT CONTROLS TO ELIMINATE POTENTIAL PROGRAM ABUSE AND THAT LEGISLATION IS NOT NECESSARY.

SECTION 9 - REPORTING TO THE INSPECTOR GENERAL

AMENDS SECTION 10(e) OF SMALL BUSINESS ACT TO REQUIRE THE INSPECTOR GENERAL TO CONDUCT INVESTIGATIONS INVOLVING 8(a) PROGRAM ACTIVITIES.

RESPONSE

CHARLES GILLUM, SBA's INSPECTOR GENERAL, IS TESTIFYING BEFORE THIS SUBCOMMITTEE AND IS RESPONDING TO PROVISIONS OF THE BILL EFFECTING THE INSPECTOR GENERAL'S OFFICE.

SECTION 10 - PUBLIC NOTICE AND COMMENT

SUBSECTION (a) REQUIRES THAT SBA CONDUCT, WITHIN 60 DAYS, PUBLIC MEETINGS OF 8(a) FIRMS; PUBLISH PROPOSED RULES AND REGULATIONS WITHIN 120 DAYS; PUBLISH FINAL RULES AND REGULATIONS IN FEDERAL REGISTER WITHIN 210 DAYS.

SUBSECTION (b) WOULD REQUIRE BOS, LOAN OFFICER OR BDS, TO RECEIVE A MINIMUM OF FIVE FULL DAYS OF TRAINING.

RESPONSE

SUBSECTION (a) WE ARE NOT IN AGREEMENT WITH THE TIMETABLE FOR THE PUBLICATION OF REGULATIONS. WE RECOMMEND FULL PUBLIC COMMENT BE RECEIVED BEFORE THE REGULATIONS ARE PROPOSED AND THAT 180 DAYS FOR

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THE PUBLICATION OF PROPOSED RULES AND REGULATIONS WOULD BE APPROPRIATE. IT WOULD BE REASONABLE TO ALLOW 360 DAYS FOR THE PUBLICATION OF FINAL RULES.

SUBSECTION (b) WE SUPPORT EMPLOYEE TRAINING, HOWEVER, WE DO NOT FEEL THAT IS IT APPROPRIATE TO SPECIFY IN STATUTE MINIMUM TRAINING REQUIREMENTS. IN ORDER TO INSURE THE MOST EFFICIENT USE OF RESOURCES, ADMINISTRATIVE FLEXIBILITY IN DETERMINING WHICH EMPLOYEE REQUIRES TRAINING AND THE NATURE OF THE TRAINING TO BE PROVIDED SHOULD BE PRESERVED.

WE DO NOT AGREE WITH THE REQUIREMENT THAT THE BUSINESS OPPORTUNITY SPECIALIST PERFORM THE DUTIES OF ELIGIBILITY DETERMINATIONS, PORTFOLIO MANAGEMENT AND CONTRACT NEGOTIATIONS. CONTRACT NEGOTIATIONS REQUIRE A MORE SPECIFIC AND DISTINCT DISCIPLINE AND EXPERTISE THAN THOSE REQUIRED FOR ELIGIBILITY DETERMINATIONS AND PORTFOLIO MANAGEMENT AND THEREFORE THEY SHOULD BE KEPT SEPARATE.

SECTION 11 - REPEAL OF P.L. 96-481

REPEALS SECTION 106 OF PUBLIC LAW 96-481, WHICH PROVIDES FOR CORRECTING THE IMPAIRMENT OF A CONCERN'S ABILITY TO COMPETE WITHIN A FIXED PERIOD OF TIME AS AGREED UPON BY THE ADMINISTRATOR AND THE APPLICANT PRIOR TO ACCEPTANCE INTO THE PROGRAM.

RESPONSE

WE DISAGREE WITH REPEALING SECTION 106 OF P.L. 96-481 BECAUSE SOME LIMIT ON THE AMOUNT OF TIME FOR PROGRAM PARTICIPATION IS NECESSARY TO ENSURE THE OPPORTUNITY FOR OTHER SMALL AND DISADVANTAGED BUSINESSES TO ENTER 8(a) PROGRAM.

MR. CHAIRMAN, I AM UNABLE TO PROVIDE YOU WITH THE RESPONSES TO THE QUESTIONS IN YOUR LETTER OF INVITATION. THIS INFORMATION IS IN ITS FINAL STAGES OF PREPARATION AND WE EXPECT TO HAVE IT AVAILABLE FOR THE COMMITTEE WITHIN THE NEXT FEW DAYS.

THIS CONCLUDES MY FORMAL PORTION OF MY TESTIMONY. I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

The CHAIRMAN. I must say the Administrator has been eating a lot of red meat since he appeared before us last time.

[Laughter.]

Mr. ABDNOR. Let me say one other thing, Mr. Chairman. When I went into office, I made four guidelines. Consistency, nothing gripes me more than to see programs under the same agency administered one way on the east coast, a different way on the west coast, and then again differently in contiguous states.

I insist upon consistency. We are also trying to get accountability. We have a new system where we are trying to see what these people are doing, and we are going to find out who is doing what.

We are trying to communicate, and at the same time we are carrying on a training program. Even with our limited dollars we have conducted the NAPA study. You are going to hear from them today. We are already trying to implement some of their suggestions.

The CHAIRMAN. Thank you. Senator D'Amato has joined us. Senator D'Amato, do you have an opening statement?

**STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator D'AMATO. Mr. Chairman, I would like permission to submit this statement for the record as if read in its entirety and congratulate you and Senator Weicker for your impetus behind this legislation.

Mr. Chairman, I would also like to say that it is always good to see Jim Abdnor, a former colleague, but particularly today to see the spirit and the vigor with which he has undertaken this assignment. There is no one who has ever met Jim Abdnor who does not come away with the feeling that here is one of the most decent human beings that one could ever have the privilege of knowing or meeting.

But couple that with the energy and the enthusiasm that he has undertaken in this new challenge, and I am just tremendously delighted to see you and hear you, Mr. Administrator, and I know that you make a very real contribution to this agency that needs your help. So, it is a double pleasure.

I have another hearing. The Banking Committee is listening to Mr. Brady and his Presidential Commission so I am going to leave, but I thank you, Mr. Chairman, for giving me the opportunity of submitting this statement.

[The prepared statement of Senator D'Amato follows:]

STATEMENT BY SENATOR ALFONSE M. D'AMATO
BEFORE THE SMALL BUSINESS COMMITTEE
FEBRUARY 2, 1988

MR. CHAIRMAN, I WOULD LIKE TO WELCOME TO THE SMALL BUSINESS COMMITTEE THIS MORNING OUR DISTINGUISHED PANEL OF WITNESSES. I WOULD ALSO LIKE TO EXTEND A SPECIAL WELCOME TO MY GOOD FRIEND, SENATOR ABDNOR.

LAST MAY, THIS COMMITTEE HELD A HEARING TO EXAMINE THE RESULTS OF THE SURVEY OF THE "GRADUATES" OF THE 8(A) PROGRAM. THE RESULTS OF THE SURVEY BROUGHT TO LIGHT SOME HIGHLIGHTS AS WELL AS SOME LOWLIGHTS, OF THE 8(A) PROGRAM. SOME OF THE SUGGESTIONS PRESENTED BY GRADUATED FIRMS HAVE BEEN INCORPORATED INTO S. 1993, THE LEGISLATION WE ARE CONSIDERING THIS MORNING, INCLUDING:

- * SHORTENING THE CERTIFICATION PROCESS TO A MANDATORY 90 DAYS;
- * INCREASING THE PROGRAM PARTICIPATION TERM. THIS BILL PROVIDES FOR A TERM OF EIGHT YEARS WITHOUT ANY FURTHER EXTENSIONS;
- * REQUIRING A BUSINESS-MIX WHEREBY PARTICIPATING FIRMS MUST OBTAIN A SPECIFIED PERCENTAGE OF NON-MINORITY CONTRACTS AT SPECIFIED INTERVALS DURING THEIR LIFE IN THE PROGRAM.

THE WEDTECH SCANDAL HAS DRAWN UNFORTUNATELY NEGATIVE ATTENTION TO THE 8(A) PROGRAM. WE MUST TAKE STRONG MEASURES TO INSURE THAT QUESTIONS RAISED ABOUT CORRUPTION THAT APPARENTLY EXISTED IN THE PROGRAM ARE FULLY RESOLVED AND THEIR RECURRENCE PRECLUDED. IT IS IMPERATIVE THAT WE IMPOSE STRICT PENALTIES FOR THOSE WHO ABUSE THIS PROGRAM BY CRIMINAL ACTIVITY. THE PROPOSALS OUTLINED IN THIS BILL ARE IMPORTANT STEPS. HUGE MONETARY AS WELL AS HARSH PRISON SANCTIONS WOULD BE IMPOSED ON THOSE CONVICTED OF ILLEGAL ACTIVITIES WITHIN THE PROGRAM.

IT IS IMPORTANT THAT WE DO NOT LOSE SIGHT OF THE ORIGINAL INTENT OF THE 8(A) PROGRAM: TO FOSTER THE DEVELOPMENT OF MINORITY FIRMS AND INCREASE THE LIKELIHOOD OF THEIR SUCCESS IN THE NATION'S ECONOMIC MAINTSTREAM. WE MUST NOT LET OURSELVES GET CAUGHT UP IN THE COMPLICATED POLITICS OF THIS ISSUE. ABUSES IN THE PROGRAM SHOULD BE IDENTIFIED AND CORRECTED. BUT WHILE DOING SO, WE MUST BE SURE TO ADHERE TO THE ORIGINAL INTENT OF THIS BENEFICIAL AND MUCH NEEDED PROGRAM.

I LOOK FORWARD TO THE TESTIMONY OF OUR PANEL THIS MORNING AND TO THE INSIGHT THAT THEY ARE SURE TO PROVIDE THIS COMMITTEE ON THE NEED FOR THIS LEGISLATION.

THANK YOU, MR. CHAIRMAN.

The CHAIRMAN. Thank you, Senator D'Amato. Senator Abdnor, let me say that I applaud both your formal statement, which I have read, and also your extemporaneous remarks this morning. I am pleased to see the new Jim Abdnor appearing here this morning and saying the things that you have been saying. I could not agree with you more, and I might also say that in your formal statement, you make some points that I agree with.

I think the bill does need some clarification. For example, you say that you do not think the division head of the 8(a) Program ought to be a political appointee. I could not agree more and I can assure you that that was not my or Senator Weicker's intent in the bill. If that is not clear, we will make it clear. The so-called 2 percent interest subsidy for development of small business in the 8(a) Program, we put that in. That also causes me some concern in light of the budget problems that we have around here.

Without just dwelling on it, I think that both you and your assistants in the SBA and the Members of this Committee are all agreed that something has to be done for this program or the program is going to be lost. My first reaction on the Wedtech scandal was, and based on the hearings we had here in this room, that this program probably ought to be torpedoed. Not just because of that, but because it was not working well. The people who were in the program were complaining about it. The people who administered it complained about it. It looked like it did not have anybody for it.

But, as I got into it, I realized, for example, 13,000 contracts, I guess, were awarded for something over \$5 billion. That, as W.C. Fields says, ain't beanbags. That is a big program. Most people do not realize that SBA has this tremendous program that can be an invaluable assistance to minorities in this country, and I applaud that.

So Senator Weicker and I both agreed that the program was worth saving, and we tried to come up with a proposal, as did Chairman LaFalce in the House, that would do that and instill some confidence in it. Based on the vigorousness of your statement this morning, I believe that you certainly are committed to not only working with us to get this bill passed, but to making it work, which is much more important.

Let me just ask you three or four questions. I will be very brief. Does SBA, either by practice or policy, log calls from Members of the Congress?

Mr. ABDNOR. My secretary keeps track of mine. I do not know what we do in other departments. All employees in SBA are supposed to log any contact from any office of any Congressman or Senator. That is typically not done in most of our offices, however.

The CHAIRMAN. They are supposed to, but it is not done? Is that what you are saying?

Mr. ABDNOR. Yes; there is a formal slip that is to be used in those circumstances, but that rarely ever happens. We started a databank, thanks to your staff who conducted a survey, and it opened our eyes that we had better get off of dead center. We are making some headway on that.

We realize that there are a lot of things that we can do better. We will not sit here and tell you that we cannot accept a lot of

criticism that we have about this program. But, we are doing better, and we will try to bring these loose ends together.

The CHAIRMAN. I would think that the Wedtech case, and cases down in San Antonio, and the case of EDP out at Fort Leonard Wood, I would think that all of those things would be a signal to Members of Congress to be very discreet and judicious about calling SBA, not only about 8(a) Programs.

I know that 8(a) is not the only thing you get calls on. You get calls on all of your loan programs. I guess that there is not a member of the body that has not called over there from time to time and say I wish you would look at this case. Senator Abdnor makes a very valid point. There is a very fine line between undue pressure from a Member of Congress and simply trying to help a constituent that you really believe has potential, or maybe has been wronged.

Just to give you a personal illustration, SBA has turned down in the West Memphis tornado, which created over \$30 million damage, and mostly to the poor people of West Memphis, AR, an inordinate number of people for loans there. I have had complaints from people in the area, and it has concerned me, naturally. When people are in an aggrieved situation like that, you want to do everything you can to help make them whole or at least help them get back on their feet.

As I got into it, I found that it was not just that these people did not have any collateral, it was that they could not repay the loan. It was the opinion based on the data that people from SBA down there, and as far as I know, SBA was on the job very quickly and taking applications. I do not know, but I think they have had probably 1,700 applications.

I cannot responsibly request you to go against sensible data that indicates that somebody cannot repay a loan. Our disaster loan program is one that I believe in also, and I want to see it administered fairly. If you start picking and choosing among those that do not look like they can pay it, but you are going to give them a loan anyway, then the program becomes unjust and unfair.

I know that all of us are pressured from time to time to call over there and try to help a friend back home or maybe when some business is in trouble that provides jobs in the community and their cash-flow is a problem. So they come to SBA and they want to get all of their debts paid off at one time and have one payment.

As I say, I will be happy to say to you in public, that you should resist all of those overtures that common sense and sound policy dictate that you should ignore, such as those overtures and pressures from Members of Congress, including the Chairman of this Committee. He certainly will never be chastising this Committee for doing that.

Let me just ask you one other question. After we see all of the Wedtech thing unfolding, one thing that I would have to say, and I do not want this to sound political because it is not, but I was shocked to find that EDP was certified as an 8(a) contractor and almost immediately thereafter got a \$10 million contract for food services at Fort Leonard Wood. Do you know of any other case where anybody has gotten as much as a \$10 million contract first crack out of the box after being certified?

Mr. ABDNOR. Would you mind if I called on Mr. Gonzalez?

The CHAIRMAN. Yes. Mr. Gonzalez, would you answer that?

Mr. GONZALEZ. Off the top of my head, no sir, we do not have that information. We could look into it.

The CHAIRMAN. You are saying that you do not know, then?

Mr. GONZALEZ. No sir. Generally, if a firm is having some difficulty in terms of demonstrating contract support in the application process, and they go forward and self-market a contract, it is not unlikely that they will come forward and be certified into the program, if that were the only obstacle by demonstrating that they have that kind of support and a contract could be shortcoming. So, it is not unusual for a firm coming into the portfolio to immediately get a contract. As to the size, it is something that we would have to look into to respond appropriately.

The CHAIRMAN. Was this firm not turned down for certification a couple of times before they were finally certified?

Mr. GONZALEZ. It is my understanding that the firm was turned down. It is also my understanding, sir, that, if you recall the way the process was prior to the regulations that were implemented in April 1987, applicants were allowed to come in with multiple SIC codes. As a result, it is possible, and I think that it may have been the case, it is possible that they had emphasized a particular SIC code that we turned them down for based on their background.

So, if I could use an example. If I wash windows and do floors and do curtains, and I asked to come into the program and I emphasized the curtain cleaning aspect of my business, but I cannot demonstrate that I am that experienced in it, I would be turned down by the SBA. I could then turn around and ask that I be considered for doing floors. If I can demonstrate that my experience is more in the floor cleaning business, then I could be permitted into the program. That has been tightened up. We do not allow for multiple SIC code applications and we ask that a primary be identified with secondaries that are closely related.

The CHAIRMAN. Do you make any effort under the 8(a) Program to spread the contracts geographically across this country, or do you just do it on a merit basis totally?

Mr. GONZALEZ. The answer to the first question is no, we do not do anything to distribute, except for the local buy SIC codes, such as construction, and I think now food services, where we do have what is called a local buy, where the activity would be restricted to the region in which the procurement agency is located. But in terms of a national buy, we do not make any effort to distribute geographically and so much so that that is why there is a tremendous amount of representation of firms in the Washington area.

The CHAIRMAN. Senator Weicker.

Senator WEICKER. Thank you, Mr. Chairman. I have a few questions, and others that can be responded to for the record. Jim, timely certification of 8(a) firms has been a perennial problem. There have been too many instances which have taken 18 to 24 months, or even longer, for a firm to get certified. The bill requires a 90-day turnaround in applications and establishes a division of minority business certification to handle all applications for the 8(a) Program. Do you agree that this process must be shortened?

Mr. ABDNOR. I did some checking with our people, and I guess I came away convinced that they can do it. They are the ones that are going to do it and I wanted to make sure that I can sit here and tell you we can. Mr. Gonzalez?

Mr. GONZALEZ. Yes.

Mr. ABDNOR. That has bothered me also. Let me say that a lot of our decisionmaking, hopefully we can do a better job though.

Senator WEICKER. Can you meet this requirement with the current workforce?

Mr. MOFFITT. Senator, if I could respond to that. If the level of the portfolio does not increase appreciably in the next year or two, we can, by filling existing vacancies and reassigning personnel from other program areas, do what is required in S. 1993. But that assumes again that the current level of portfolio does not increase dramatically.

Senator WEICKER. How many 8(a) applications did SBA receive last fiscal year? What is the status of those applications? How many were rejected or accepted or still pending? Could you give me a rundown on that?

Mr. GONZALEZ. We could submit that for the record.

[Information follows:]

In response to your verbal request for information regarding the number of applications received in fiscal year 1987, and the disposition of these applications, we contacted each of the regional offices.

We have been advised that during FY 87, the various field offices received a total of 1147 stage II applications for participation in the 8(a) program. The field offices are unable to provide information regarding the current status of each case received during that period. Our records do indicate, however, that during FY 87, 879 applications were processed with 337 approvals, and 542 declines.

Senator WEICKER. To inject competition into the program, the bill sets \$1 and \$2 million thresholds for competing large dollar contracts, which is identical to the House bill. In fiscal year 1986, using these thresholds, how many contracts and what dollar amount, would have been competed in the program, and what would happen if the levels were raised to \$3 million or to \$5 million? Is that something that you can give some sort of an answer now, or again would you like to respond for the record on that?

Mr. GONZALEZ. If I may for the record, sir.

[Information follows:]

Total 8(a) Awards for Fiscal Year 1986 = 4,582

8(a) construction contracts over \$1 million = 129

8(a) other than construction over \$2 million = 239

8(a) construction contracts over \$3 million = 30

8(a) other than construction over \$5 million = 89

Senator WEICKER. The bill gives 8(a) contracting in SBA regional offices. It gives the Associate Regional Administrator final authority to approve awards. Do you agree with this concept?

Mr. ABDNOR. Yes, I do.

Senator WEICKER. I have got other questions for the record. I will have one more, because I want my colleagues to have time here. The bill establishes an 8-year term for program participation. The current FPPT system allows firms 5 to 7 years. The House bill establishes a 9-year term.

What is your position on an 8-year term? I do not want to be misleading here because it might be 5 to 7 years, but these things go out further and further and further. So really the question is, what is your position on an 8-year no-exceptions term?

Mr. ABDNOR. I guess I would be very happy with that. I would like 7, but we could do it in 8, if that becomes the final decision.

Senator WEICKER. No exceptions?

Mr. ABDNOR. They either get it done in 7, or 8 as your bill allows. If they are not capable, and I am not sure they are going to be, just like some of the loans that we are talking about, they can be dropped from the program. We will not carry somebody 8 years. If they are not making any headway or doing their job.

The CHAIRMAN. Thank you, Senator Weicker. Senator Kerry.

Senator KERRY. Thank you very much, Mr. Chairman. I just have a couple of questions. I share, Senator, the good feeling that my colleagues expressed about the energy and the substance of your earlier comments, and I could not help but be struck by the fact that maybe if we had an interim appointment down there for some of your colleagues, we might move this stuff through a little faster.

The first question I have is regarding one of the more controversial aspects of the legislation, and I think one of the more important pieces if we can work out a good approach to it. That is the mixed requirement issue, the notion that some of these businesses are going to have to get competitive contracts outside of the 8(a) Program, and increase their share as they go along in order that you do not wind up with a problem that when you terminate the 8(a), they are left without anything.

The problem with that is obviously severalfold. I would like to ask you how can you, at the SBA, and do you have a plan for, how you can guarantee that we do not get too rigid in the measurement of that increase, so as to negate their ability to participate, but also guarantee they are going to get increasing shares at the same time?

Mr. ABDNOR. I suppose we would have to figure out what is reasonable. If we are not careful here, again, it could get out of hand. We get too generous sometime and let them fall behind. Senator Weicker just said we are going to set the limit in 8 years.

We have got to move them along. I realize you just cannot be that rigid. There has got to be a little leeway, but I do not think it would be too great, if I am talking about what you are saying here.

Senator KERRY. What troubles me is that we have a minority business program because there are institutional prejudices that make it difficult for businesses to get going and get started. How can we make certain that if they bid outside, they get the job?

Mr. ABDNOR. Hopefully, this new 5 percent set aside, and even in the 8(a) Program. We can now make it partly competitive when it goes over the \$2 million threshold.

Senator KERRY. But that is as to the 8(a).

Mr. ABDNOR. You are concerned about after they leave the program or in the program? You passed legislation last year, I guess it was, Mr. Chairman, or was it before that when I was still here, with the 5 percent set aside for a minority business over and above the 8(a). That is another field for them to get into and become competitive.

Mr. MOFFITT. Senator, I think that there really is no way of telling what the experience of those firms are going to be that are going to be now required to bid competitively, as opposed to not being required to do that before. I just think that it is something that needs to be tracked in the first couple of years of the program to see what kind of reception they are going to get in the outside daily universe.

Senator KERRY. Do you think we can structure this in a way that, while it is sensitive enough to the notion that we clearly want that increase, that we do not get so rigid that we begin to bureaucratically cut off our nose to spite our face?

Mr. MOFFITT. I think if you read the bill, there has been an attempt to do that. For example, say you could exceed those by 5 percent. Having dealt with this issue and worked with the House on their bill, and considered that question for the last 6 or 7 months, I have come to the conclusion that there is no perfect solution that is going to guarantee competitiveness, yet flexibility.

On the other hand, I think all we can do is to try the legislation as it is currently written, and see where we are a couple of years down the road. I do recognize that there are possibilities that 8(a) firms will bid considerably and yet perhaps never win any contracts. That would, therefore, cause them to fall behind the percentage guidelines that have been set in the legislation, but I think that we are going to have to track that in the next couple of years to see what effect it really will have.

Senator KERRY. Well, obviously, I hope, as I express in my questions, that we are going to be sensitive to that and intelligent about it, and not create further problems. I just have one last question, Mr. Chairman, and that is, obviously, financing is a key issue also as any business starts up.

Some of these firms have difficulty in getting access to financing, even though they may be able to get a contract. In light of that, do you agree with the provision within this legislation that creates a new direct loan program in order to help provide that kind of financing?

Mr. MOFFITT. No, we do not. I think our reasons are contained within the Senator's statement that we submitted for the record.

Senator KERRY. Is there any room to move there? Is it a categorical—

Mr. MOFFITT. We never like to think of ourselves as inflexible.

Senator KERRY. Well, that is one of those generics, you know, that never gets us anywhere, but I will take it as being a very positive comment anyway.

[Laughter.]

The CHAIRMAN. Senator Levin, did you or Senator Harkin, or both of you, have opening statements?

Senator LEVIN. I do have a few questions.

The CHAIRMAN. Did you have an opening statement for the record?

Senator LEVIN. Just a very brief oral one, if I could do that.

The CHAIRMAN. Please proceed.

**STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR FROM THE
STATE OF MICHIGAN**

Senator LEVIN. Thank you, Mr. Chairman. The 8(a) Program is a much-needed program. It is also a program which needs to be tightened up. Our Wedtech hearings showed that there are a number of problems, many of which are addressed by your bill, Mr. Chairman.

I commend you and Senator Weicker and your other cosponsors for that bill. I think it goes a long way to reform and to tighten up a program which is very valuable to this country, but which also has to be reformed if it is going to be preserved, or else it is going to lose the confidence of the public.

Those hearings showed that the actions of a few people and the sloppy procedures in a limited number of cases led to some horrendous results. I would like to talk just about a few of the problems that we saw. See if you agree they are still problems and how we best address them.

Much of what we saw in those hearings is addressed by the bill. The stimulus for competition is exactly right. The stimulus for graduation is exactly right. I think Senator Kerry's comments are also accurate that you want to make sure that is done in a way that is flexible, so that you do not lead to some unjust results.

There are few very limited areas that I would like to ask you about, Senator Abdnor, and see whether you think we should address these legislatively or whether you can address them administratively. First, one of the key transactions in Wedtech was a so-called stock purchase agreement in order to keep 50 percent disadvantaged control.

That so-called stock purchase was an agreement under which no stock was transferred to the new owner, no money changed hands, and it was unlikely that the stock could ever be acquired from escrow because of the huge amount of money that was involved. You had no deliveries of stock to the purchaser, no fixed price set for it, no money changing hands, and yet that purchase agreement permitted Wedtech to stay in the 8(a) Program.

Your new standard operating procedures, which were issued last year, do not address, as we read them, that specific problem, as to what constitutes a stock purchase. I am wondering whether or not you believe that additional steps would be appropriate, either with your procedures specifically to lay out prohibitions on that kind of phony transaction, or whether or not the Chairman, Senator Weicker, and others, should look at a possible amendment on their bill?

Mr. ABDNOR. Senator Levin, I am going to call on Mr. Gonzalez for that.

Mr. GONZALEZ. Yes. We believe that we have tightened considerably on that particular aspect of the program. We now require that any stock transaction that occurs or is contemplated by any 8(a) firm must be submitted to us for review and clearance prior to our allowing it to happen and still remain within the 8(a) Program. We also require that all that the disadvantaged certified individual or individuals must demonstrate that they still control all types of stocks, not just the voting stock, but all types of stock.

Senator LEVIN. Well, the review and clearance, of course, existed then. It was reviewed and it was cleared. But, the way we read your new procedures, the problem is not addressed, and what I would like to do is get my staff to get together with you and show you where we feel they do not adequately address that problem.

Then, if you agree, would you then let us know whether you feel, if it needs to be tightened up further, whether that should be done administratively or whether it would be helpful for the Chairman to consider a possible amendment to the bill.

Second, there is the question of the so-called option, the stock option. You provide that an option to purchase stock constitutes ownership. You do that in your new standard operating procedures in order to prevent the circumvention of your minority ownership requirement that could exist by simply having a nonminority have an option to buy the stock.

You say it is a nonminority person, an unqualified person, has the option to buy the stock, that is going to disqualify the company from the 8(a) Program. But, you open up the reverse loophole where the minority person has the option to buy the stock. If the option is considered ownership, then you could have an option in a minority person's hands that could not realistically be exercised and maybe is never intended to be exercised, but which could constitute ownership under that same provision.

So, by trying to close the one loophole, which you do, you may be opening up another loophole. What I would like to do with that one also is have our staff people meet with yours.

Mr. GONZALEZ. We would be more than glad to.

Senator LEVIN. And then, if that is accurate, we also would like your assessment as well on whether that would be best corrected administratively or possibly using this vehicle which the Chairman has introduced to do it. The one final question I have has to do with the question of economic disadvantage.

We found in the Wedtech case that the owners, at least one of the key owners, became a multimillionaire during this process and still was considered economically disadvantaged because of the way the program is structured. The SBA officials told us that they could not exclude Wedtech on this basis because once the company is admitted to the program, it can continue to participate no matter how successful or wealthy—all the owners could become multimillionaires, and it still is considered economically disadvantaged for the term of the program. Under the rules for 8(a) that are in effect today, could this still be true, and if so, is it appropriate?

Mr. MOFFITT. We are going to be dealing with the issue of economic disadvantage, both in terms of the ability to come into the program threshold and ability to continue in the program within the next 30 days, administratively.

Senator LEVIN. That is fine. It troubled us a great deal, obviously.

Mr. GONZALEZ. Us, too.

Senator LEVIN. We would like to see how you are going to do it. We might have some suggestions for you as to how to approach that. Again, let me commend you, Mr. Chairman, for what you are doing in this area. It is a critical improvement in the 8(a) Program.

The CHAIRMAN. Thank you, Senator Levin. Those are excellent questions. Senator Harkin.

STATEMENT OF HON. TOM HARKIN, A U.S. SENATOR FROM THE STATE OF IOWA

Senator HARKIN. Thank you, Mr. Chairman. I too just want to join in congratulating you on your leadership in this area and making some of these needed changes in the 8(a) Program. I have a couple of questions that are sort of a lead into what I would like to have as my opening statement. What is the budget of the SBA right now, Senator Abdnor?

Mr. ABDNOR. It is just short of \$½ billion.

Senator HARKIN. \$500 million, something like that? How does that compare to last year?

Mr. MOFFITT. It is about a 5 percent reduction.

Mr. ABDNOR. Most Government agencies are taking pretty much the same cut.

Senator HARKIN. Where does that money come from?

Mr. MOFFITT. Where does it come from?

Senator HARKIN. Where does it come from?

Mr. MOFFITT. The taxpayers, I would imagine.

Senator HARKIN. The taxpayers of this country pay it, OK. Wonderful. You know, it seems to me that we have long had a principle in this country, Mr. Chairman, that, you know, as I like to say sometimes we take the jam from the top shelf and put it on the bottom shelf so that the little people can get some of it too.

We have a graduated income tax, what is left of it. The bigger you are and the more you make, the little bit more you pay. As I say, what is left of it. I have often wondered why, if we really want to invigorate small business growth in this country, get minority businesses going, why do we tax all of the citizens of this country for that?

Why don't we have some kind of a business tax? Why don't we tax mergers and acquisitions of the larger businesses? Put some kind of a tax on them and use that to fund the Small Business Administration and use a goodly portion of that to fund the minority small business or the COD, what do you call that?

Mr. MOFFITT. The MSB/COD.

Senator HARKIN. MSB/COD. It seems to me that would make more sense than taxing all the people of this country for that. I know that is out of our jurisdiction, Mr. Chairman. I know that comes under the Finance Committee, but it would seem to me that we ought to be thinking about things like that and talking about things like that.

A lot of these big businesses that are merging, acquiring other businesses, I think every time they do that above a certain level,

they ought to pay so much in taxes. That is what we ought to use to fund the Small Business Administration.

The CHAIRMAN. You saw how many votes Senator Hollings got for taxing transfers of broadcast certificates to support public broadcasting: Twenty five.

Senator HARKIN. I think that may be a little bit different, Mr. Chairman, when it comes down to public broadcasting, I think.

The CHAIRMAN. It is different. I am not suggesting that they are on all fours.

Senator HARKIN. There may be some similarities, but I think you might get a little bit more support if we are looking at revising the tax system and making some minor changes in it and looking for avenues or ways of getting monies to fund programs that we deem are important. I just suggest this might be one that we might look at. I throw that out to the public and anyone else who might be here.

It seems to me, and I asked the question obviously knowing the answer, that the funding for the SBA is going down, at the time when we know full well that it is small businesses that are providing most of the employment opportunities in this country. That is where entry level is. That is where people are being trained, and some of our training programs are going into small businesses, not large.

That is where the cutting edge is of some of our new technology firms. It seems to me that rather than cut back on the funds, we ought to be increasing them. If the will or the dollars are not there from the taxpayers of this country, we ought to go to another source. That is off the subject that I know is here, but I think it is somewhat close because I am concerned that we do not have the proper funding and staffing for the minority small businesses, the 8(a) Program, that we have had in the past.

Having made that as part of my opening statement, the only other thing that I wanted to just focus on is just the administration of the program itself. Is it administered now by a political appointee?

Mr. MOFFITT. Yes.

Senator HARKIN. I do not know, maybe you covered this before I came in, and I apologize for being late, but the bill calls for it to be administered by a civil servant, not a political appointee. Do you have a view on that? I did not read your statement, I am sorry.

Mr. ABDNOR. Well, I am against it. That is the only one I have down there for the most part who has input in running the program. Most of the people under him who are in key positions are career people. I personally think that if I am going to have responsibility for the program, I ought to be able to have my own person so I can direct him to what I want to have done.

If he does not like it, he has to take the blame and I guess I do too. If you give me a career guy, he can tell me where to go.

The CHAIRMAN. Did I hear that right?

[Laughter.]

Mr. ABDNOR. But, seriously, I would rather see it. You know, Senator, I just do not think because somebody's job is career, is going to necessarily make them more honest or anything else. You know, after reading about all these scandals going on in our reli-

gious groups around this country, I think it is the individual in the longrun who counts. I would like to think I can find trusting people.

Senator HARKIN. I did not know they were civil servants.

[Laughter.]

Mr. ABDNOR. They are not, but they have their own classification for themselves, I can tell you that. [Laughter.]

You asked me, and the answer is I would rather have it as a political appointment and the rest of them career.

The CHAIRMAN. As you lawyers say, a political appointee is not, per se, bad.

Mr. ABDNOR. I do not think it has to be either if you pick the right people.

The CHAIRMAN. Most people think that Richard Daley was a great man because he ran that city based upon elections coming up. Do you have anything else, Senator Harkin?

Senator HARKIN. No, Mr. Chairman, thank you very much.

Mr. MOFFITT. Senator, may I make one comment?

The CHAIRMAN. Certainly.

Mr. MOFFITT. I think it goes to what the Senator said in his opening remarks and Senator Kerry and Senator Levin were commenting on. This issue in section 401, where it mandates a reducing dependence upon 8(a) contracts, I think Senator Kerry's comment was, "let's try to be flexible." Well, that sort of cuts against what Senator Abdnor was saying in his opening statement.

We would like to be flexible, but as the bill is currently written, and as our intentions of administrating this bill, if passed as written, would be that we are not going to be any more flexible than the provisions of this bill will allow. I think that is something that the Senator was saying. I think we need to be very clear about that so that we do not leave this room with any misunderstanding. We are prepared, if this bill is passed, to administer it as written. I think that is very important to say and have on the record.

The CHAIRMAN. Mr. Moffitt, your point is well taken. As I read Senator Abdnor's testimony coming in this morning, my staff had made a notation in the margin on that very point. You must have some flexibility on that. Generally we want to get people out of the program if they are not making progress. But why they are not making progress ought to be a consideration in whether to kick them out or not.

Mr. MOFFITT. I guess beyond that what the Senator was saying is we are not sure we want too much flexibility. I think that was part of his point.

The CHAIRMAN. But I think this categorically says that just because somebody does not meet this requirement of outside business over the period of the 8-year program, say categorically that they need to leave the program, I think is maybe unduly harsh. I just do not know. I am inclined to agree with Senator Kerry on that. We will work with you on that to try to make sure that it is workable.

Mr. ABDNOR. The thing that I would like to say in closing is that I hope we can work together on this. We are willing to come up anytime you want.

The CHAIRMAN. I am sure we can. Incidentally, Mr. Gonzalez, I am $\frac{1}{16}$ Cherokee. Do I qualify? [Laughter.]

I am going after a food service contract.

[Laughter.]

Mr. GONZALEZ. If you can demonstrate that you meet all of the other criteria, we would be glad to review it.

[Laughter.]

The CHAIRMAN. Thank you, Senator Abdnor. Gentlemen, thank you very much for being with us this morning. Our next witness is the former chairman of the Small Business Committee in the House, the Honorable Parren Mitchell. Parren, we are honored to have you with us this morning.

Senator HARKIN. Mr. Chairman, I am going to have to leave because I have another Committee meeting, but I would like to congratulate Mr. Mitchell and welcome him back here. It is always good to see you.

The CHAIRMAN. Parren Mitchell comes to us this morning, not as the Chairman of the House Small Business Committee or as a Congressman, but as Chairman of the Minority Business Enterprise Legal Defense and Education Fund. Parren, please proceed.

STATEMENT OF HON. PARREN MITCHELL, CHAIRMAN, MINORITY BUSINESS ENTERPRISE LEGAL DEFENSE AND EDUCATION FUND, WASHINGTON, DC, ACCOMPANIED BY ANTHONY W. ROBINSON, PRESIDENT, MINORITY BUSINESS ENTERPRISE LEGAL DEFENSE AND EDUCATION FUND; AND TALMADGE BRANCH

Mr. MITCHELL. Thank you very much, Mr. Chairman. At the outset, first let me introduce Mr. Anthony Robinson, to my right, who is the president of the Minority Business Enterprise Legal Defense Fund, which has really been in operation for 5 years. One of the reasons I left Congress was to devote more time to that. This is Mr. Talmadge Branch of the staff of the fund.

Mr. Chairman, I am just honored to appear before you, and I am sorry that so many Members of the Committee had to leave. I understand the pressures, but I am sorry that they had to leave because I just wanted to publicly thank you and Senator Weicker and some of the others for the kind of commitment that you have shown throughout the years, advocating for, supporting minority businesses' growth and expansion.

I had the pleasure of serving, or interfacing, with you on many occasions when I was in the House of Representatives. Therefore, I have first-hand knowledge of the kind of commitment that you bring to a program to promote and enhance minority entrepreneurship. I see your staff person, Mr. Robert Wilson, back there who did an excellent job in briefing the National Minority Business Brain Trust on your bill. That was done on January the 25th, and he acquitted himself in an admirable fashion.

I know you started working on this bill some time ago, and I congratulate you on what you have done up to this point. I think it is a pretty good bill. I would be remiss if I did not tell you that many persons in the minority business community feel put-upon right now. They believe that this legislation is a direct outgrowth of the Wedtech business and the situation in the district office in Texas. They ask, "look, we have run clean operations, we have found our own contracts, why should we be punished?"

Well, I frankly do not think that this is a punitive bill. I think it can be improved on, but I do not think it is punitive. As you may well know, from time to time when I was in the Congress and I Chaired the Small Business Committee, I tried my best to bring about reforms in this program. No program is perfect and we constantly need to improve it.

I raised the penalty for fraud companies. We provided some flexibility in the SIC codes in the legislation that I authored, and so it has been a constant process of reform. I think this bill should not be viewed as a punitive bill. I do hope that—

The CHAIRMAN. I can assure you that certainly is not the intent.

Mr. MITCHELL. I know you well enough to know that it would not be designed as a punitive bill. I just hope that some of the recommendations I will offer to you this morning can be accepted to help dispel that notion that it is a punitive bill. The reform has to begin with the SBA. That is where the reform starts.

You and I know there are many good and dedicated persons over there at SBA who are professional and work well. However, there are far too many incompetent, indifferent, unprofessional persons in that administration, who got their jobs through political pressure, and actually do nothing at all in terms of enhancing the purpose of the 8(a) legislation. In fact, they provide obstacles.

Let me give you just a quick illustration. Someone commented this morning that we wanted the bill, the 8(a) Program, to work, opening it for new business, not confining it just for those who are already in business. I got a letter from a gentleman in Baltimore where his 8(a) certification had been turned down, despite the fact that he had money, despite the fact that he had some expertise, but because he had no track record.

Well, what new business has a track record? That was a letter dated last month. It is that kind of nonsense that I have had to live with, the horror stories, for the last 17 or 18 years. Actually, applications getting lost in offices, I can document this, lost files, conflicting policies. We want new businesses, you do not have a track record. Incorrect information given to clients, ad infinitum.

The one point I want to make this morning is that this agency must be depoliticized. It has got to be. I can never, never work, unless it is depoliticized. I am not referring to the present Administrator, but in the past, I have seen the administrators come in. Many of them have been former Members of the Congress, and when we interrogate them, we clap them on the shoulder, "John, it is good to see you, how is your wife," that kind of camaraderie.

It really blunted the thrust of an investigation or an oversight hearing on the Small Business Administration. I agree with the present Administrator, Senator Abdnor, that, in addition to cleaning house in terms of depoliticizing the agency and making people work, emphasis on staff training, professionalism has to be put in place.

We have evidence throughout the years, and some of the hearings will document this, that we have telephone calls where employees at SBA said they had no knowledge that there was a Direct Loan Program. In order to get it, we recorded those conversations. Now, that is just sheer nonsense to permit people to continue func-

tioning in an agency when they are that incompetent. We want competence, we want training, we want depoliticization.

In addition to that, we want staff. There is no way in the world that any agency can function unless it has sufficient competent staff to do the job. SBA was targeted by the administration to be eliminated. The administration did not win that fight, therefore, it chose to impose draconian cuts year after year on the SBA staff. They are down, now, to a point where I am not at all sure that they can function well. More competent staff has simply got to be provided for the Small Business Administration.

Now, very quickly, I know that we are under some time pressures, I just want to mention one or two concerns about the bill. I have some problems with the thresholds of \$1 million and \$2 million. I believe that some studies have shown that that is about the average where contracts fall, or the high point where contracts fall for minority business firms.

I do think that there is a potential for those thresholds to be dangerous. Therefore, I would recommend that we have a yearly review of them. I think the House bill recommends a review, or your bill, or both, at the end of 3 years. But, I think we need a yearly review to make sure that we are not hurting the minority business community by keeping those thresholds in place and inflexible.

Second, I have a concern, like so many of the Members of the Committee have commented on, on the mandated mix. I personally have counseled 8(a) firms for the entire length of time that I have been in Congress and in my new position with Minority Business Legal Defense Fund. By the way, I am chairman, but I do not receive any salary for that, and the whole board does not receive any salary. These are minority businesspersons who see the necessity for the fund, so there is no money in it for me or the board members.

I have counseled these firms that by the time they are ready to graduate, they ought to have about a 30 percent 8(a) contract base, and a 70 percent non-8(a) contract base. I have counseled them along those lines because I know what happens once they get out of 8(a) status and they do not have that kind of mix. Few, if any, of them could achieve that mix. They simply could not. The harsh reality is that in the private sector, there is a wall that is set up, there is an institutional network, there is an old-boy network, that makes it exceedingly difficult for minority firms to break into the private commercial sector.

There were a series of articles in the New York Times a couple of months ago on this very subject, where even the best firms that were 8(a), when they go for commercial contracts, simply are turned down or, at best, they get a very minuscule contract. Now, you can mitigate against that by opening up all Government services to the 8(a) firms. I think that is a salutary step where we can go across the board in every governmental agency and work in that way and at the same time still try to get into the commercial sector, trying to get contracts.

I think your proposal to assist in the bid process with finance is helpful. I know it is beyond your purview, but I think I know where you would like to be. That is a 5 percent goal across the

board in all Government agencies. If we can do that, then we will accomplish, I think, greater success in achieving the kind of mix that you are suggesting. I would firmly recommend that you not mandate the mix, that you not do that. I would urge that you make it as flexible as possible.

I think that there should be a requirement on the part of SBA, and indeed the Congress, that an 8(a) firm document its good-faith effort to achieve that mix. I know of some Government agencies that will simply not give a contract to a black or hispanic. If that condition obtains and you make it mandatory, do you not understand what you are doing to the chances of that firm surviving in the 8(a) Program?

Third, I would recommend that the House version of the 9-year period in the program be accepted. Very succinctly stated, most businesses work on a 3-year cycle or a 5-year cycle, and I think that the 9 years is more consonant with the 3-year cycle, terminating at the end of 9 years with no further extensions beyond that.

You indicate that these thresholds of \$1 million and \$2 million can be waived under certain conditions by a procuring agency if it determines in writing that no meaningful competition would occur for a particular contract.

This justification must comply with the requirements set forth in the competition and contracting act. If you are going to leave the thresholds in place, I strongly urge that that waiver language must be kept in place. Even with the competition and contracting act, there is still an area of a potential for abuse. You know, the guys say, "yeah, there is a contracting compliance act and I have complied" and they are lying. You almost need some outside entity, maybe a task force of the Congress, I do not know, to monitor the use of that waiver as significantly as you can.

We have some concerns, and if you look to my testimony about the denying 8(a) firms noncompetitive contracts if they exceed more than 150 percent of the contract they are operating on. That is just crushing business. Let's take the guy who invented the hoola-hoop and, if he were an 8(a) status, he had a relatively small contractual arrangement before that. But suddenly, hoola-hoops were in vogue around this country, and if he were an 8(a) status, you would tell him look, we cannot give you another contract to provide hoola-hoops for Fort Benning, GA, because that exceeds 150 percent of your past contracts. This is the area that I think is very, very punitive and I would urge you and entreat you to reconsider that.

While I am here, I have tried my best to do this in 10 minutes, and I think I have covered my major points. Let me take advantage, if I may, Mr. Chairman, of some current developments, just to alert you and your staff to them. I would be glad to meet with you and your staff on them. These are developments that I think are invidious developments and are inimical to the best interests of minority business.

No. 1, Jim Miller over at the OMB has proposed a change in the OMB Circular A-102. That change that goes out to all the agencies says that they are to delete any language with reference to minority business utilization except where it is the law. Well, you have an 8(a) Program. Agencies that are on their own say, "Look, this is a

fair thing to do, we are going to try to get a fair share; I have gone ahead and administratively sought out minority business." This circular, this recommendation by Jim Miller and OMB, would kill all that agency initiative, no question about it. I think we need to be on top of that.

No. 2, development that is very, very distressing to me is the umbrella contract, the total base maintenance contract. More and more agencies are doing this, and I understand why. It is easier to administer one contract than five. However, if you have a contract with a military base that requires food service, janitorial services, security services, and 18 other items, it is most unlikely that you are going to find a minority firm to be able to fulfill that umbrella contract.

This is not being done by the Congress. It is being done by agencies to make life a little easier for themselves, and I hope that we would take a stand. If they are going to continue to do that, then we have got to make sure that they operate under the provisions of P.L. 95-507, which means that the prime cannot get their total base maintenance contract, the umbrella contract, except if he is in compliance with P.L. 95-507. I would be glad to meet with your staff on that.

Third, and last, a very quick recommendation. (I heard the bells.) I am absolutely shaken by the emphasis on the part of the agencies to expand the definition of who is socially and economically disadvantaged. The SBA Act is very clear. It is Hispanics, Blacks, Aleuts, American Indians, Pacific Asians, and so forth. To my utter consternation, I see the agencies are simply expanding the definition.

By way of illustration, we talk about American Indians. Well now, some are getting contracts for East Indians, Hindus, and Sikhs originally from Calcutta. There is nothing to show that these people, as a class, are socially and economically disadvantaged. You cannot cut the pie that thin. We deal with Asian Pacifics, and obviously the law meant Chinese and Japanese living in the west coast area. Now, we are including Koreans, other non-Pacific Asians administratively.

That means it is freezing out Blacks and Hispanics and the original group that was to be the beneficiary. When it comes to Hispanics, I have found some agencies include Portuguese, those from the Iberian Peninsula, and Castillians. There is nothing to suggest that these people, per se, as a class, are socially and economically disadvantaged. I hope that we can get on this and block this kind of freedom of definition.

The CHAIRMAN. I guess $\frac{1}{16}$ Cherokee is out, huh? [Laughter.]

Mr. MITCHELL. Not a ghost of a chance would you have. [Laughter.]

Listen, greed is not good, but greed is with us. That is a fact of life. I know that there are these people who come in and try to lie to SBA and everybody else. I will give you this one little anecdote before I leave. When we had this program as a set-aside under the Public Works Act, blonde-haired, blue-eyed Scandinavians would come in and say I am a minority; I am Black, I am eligible under the program. We ran through a series of questions with them. The easiest way to identify it is to ask legitimate minority firms who

know other legitimate minority firms. But, the easiest thing to do was to ask them what church you go to. [Laughter.]

What is your church? Because the church has still remained rigidly segregated in this country. There are not many minorities that go—well, never mind, I had better drop it. [Laughter.]

In all seriousness, Senator, I thank you for the opportunity. I would hope that you would carefully consider the recommendations that I have made, that 150 percent growth above existing contracts can easily be construed as punitive. I would urge that you accept all of them. I thank you for letting me testify before you. I am prepared to answer any questions you might have.

[The prepared statement of Mr. Mitchell follows:]

MBELDEF

Minority Business Enterprise Legal Defense
and Education Fund, Inc.

TESTIMONY ON S. 1993 BEFORE THE COMMITTEE ON SMALL BUSINESS,
UNITED STATES SENATE, WASHINGTON, D. C. ON TUESDAY, FEBRUARY 2,
1988

Submitted by: Parren J. Mitchell, Chairman
And
Anthony W. Robinson, President
Minority Business Enterprise Legal Defense and
Education Fund, Inc.

Chairman Bumpers, Senator Weicker and Members of the Committee, I am honored to appear before you. Let me say at the outset that the minority business community should be forever grateful to Senator Bumpers, Senator Weicker and other key members of the Committee who have advocated for and acted on behalf of the minority business community. I had the pleasure of working with you while I served in the U. S. House of Representatives, therefore I have first hand knowledge of your commitment.

Let me take this opportunity to thank Mr. Robert Wilson of your staff for the excellent briefing he gave on the Bill at the January 25th meeting of the National Minority Business Brain Trust meeting. He acquitted himself in a splendid fashion.

I know that the Committee started working on S(a) reform Bill more than two years ago and I congratulate you on producing legislation which, with a few changes, should work well for minority entrepreneurs.

Parren J. Mitchell
Founder and Chairman

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202/543-0040

Anthony W. Robinson, Esq.
President

I would be remiss if I did not tell you that many persons in the minority business community feel put upon. They believe that this legislation is a direct out growth of the Wedtech case and the situation in the District SBA office in Texas. They argue "we have run clean operations why should we be punished?" As you perhaps know, for many years while in Congress, I sought to initiate significant reforms in the 8(a) program. I do not believe S. 1993, with some modifications, is punitive.

It is my firm conviction that reform had to begin with the Small Business Administration itself. There are many good, dedicated professionals working for the Small Business Administration, but there are also some incompetent, indifferent employees working there who got their positions through political pressures. I have had to live with horror stories for the past seventeen years...lost applications, lost files, conflicting policies, incorrect information given to clients, etc. ad infinitum.

Clearly the agency has to be de-politicized. Your legislation seeks to begin this much needed process. The emphasis on staff training in S. 1993 is another sorely needed reform.

In addition, the staffing at the Small Business Administration has undergone draconian cuts during the past seven years. An agency of government simply cannot work unless it has sufficient competent staff to do the job. Under S. 1993 it is proposed that business opportunity specialists handle only 20 cases at a time. This proposal demands more staff. The staffing

problem must be addressed at the earliest possible opportunity.

There are several areas that give me concern in the bill.

First is the threshold of one million and two million dollars. I believe a study has shown that these are about the average large size contract that an MBE firm might get. However, as MBE firms enhance their abilities, but are still in the 8(a) program, this threshold for competition could prove detrimental. I would recommend a yearly review of the threshold.

Second, I have concern over the mandated mix of 8(a) and non 8(a) contracts. I have always counseled 8(a) firms to try to achieve a 30% 8(a), 70% non 8(a) contracts before the last year they are in the 8(a) program. I favor a mix, but would caution that in the commercial world there is still a strong reluctance to utilize minority firms. Some months ago, an article in the New York Time spoke to this problem. The bottom line of the article was that no matter how capable, for the most part, minority firms simply cannot get contracts or, at best, they get only very, very modest contracts. Opening all agencies to a 5% MBE goal, and allowing 8(a) firms to participate in all small business government programs will be helpful, but it is clearly unrealistic to assume a significantly greater area of opportunity in the private sector. The House version of the legislation requires a documented good faith effort on the part of MBEs to achieve the mix. The Senate version makes the percentages of mix mandatory. I believe the House version is more reasonable.

Third, because many businesses operate on a three year cycle, or a five year cycle, it appears that a nine year term in

the program, with no extensions, is desirable.

Fourth, the thresholds of one million dollars and two million dollars for 8(a) competition could be "waived by the procuring agency if it determines, in writing, that no meaningful competition would occur for a particular contract. This justification must comply with the requirement set forth in the competition in contracting act." While I have concerns about the threshold, if they remain in place, the waiver language must be kept in place. However, waivers must be regularly monitored by some entity external to the agency. The potential for abuse is there, even with the competition in contracting act being operative.

Those provisions denying 8(a) firms non-competitive contracts that exceed by more than 150 percent the total contract price paid to the program participant for performance of its largest prime contract, we believe, will stifle growth. They will also preclude program participants from participating in generally accepted contractual arrangements in fulfilling procurement obligations. Specifically, this provision could be interpreted to prohibit participants from subcontracting with other firms in the performance of the contract effort. This practice is common in the government procurement industry, among large and small businesses, whenever a prime contractor needs to rely on the experience or expertise of another firm. For example, some of the major systems acquisitions such as the space shuttle. Lastly, we see no rational justifications for the 150 percent cap being tied to a participant's prior largest contract.

Again, please accept my congratulations for crafting a good bill, but one which I believe will be made better if my recommendations are accepted.

Mr. Chairman, members of the Committee, while I am before you I would ask that I have two minutes to mention three development which I believe are not in the best interest of minority business. At some future time, I would be pleased to discuss these developments in depth with you or your staff.

Number One. James Miller of the Office of Management and Budget has in OMB Circular A-102 recommended to delete all national policy language referring to the utilization of minority business, except where mandated by law. There is no doubt but that this would undermine the desire and/or the will of many federal agencies to use minority businesses.

Number Two. More and more agencies are using total maintenance and service contracts or "umbrella" contracts. By way of illustration a contract for an army base would require one contractor to provide many services, food, janitorial, security, etc. Most minority firms cannot handle large umbrella contracts, and are therefore being frozen out. This situation can be ameliorated if a prime contractor is required to adhere strictly to the provisions of Public Law 95-507.

Number Three. More and more agencies, both public and private are expanding the definition of those eligible to be deemed small, disadvantaged enterprises. The Small Business Act defines American Indians as eligible, but many are, including East Indians, administratively. The Small Business Act

identifies Hispanics as a socially and economically disadvantaged class, now those from the Iberian Peninsular, Castellians are being administratively included. The Small Business Act includes Pacific Coast Asians (Japanese and Chinese) but Koreans and Thailanders are being administratively included.

I deeply appreciate the opportunity to appear before you and welcome your questions.

The CHAIRMAN. Parren, that is an excellent statement and I thank you for it. I am sorry the other Members were not here to hear it. I want you to also know that I find very little in your recommendations to quarrel with. We may have some minor differences. I am shocked that an OMB circular, such as you described, has gone out. I would like, if you have an extra copy, to get one to put in the record.

Mr. MITCHELL. We would be delighted to do that.¹

The CHAIRMAN. I am shocked, but not surprised. On staff, we are trying to make sure that we have one staffer for each 20 enterprises. The average right now is 39 on the mix. Obviously, we are going to come up with some kind of mix that would probably be more to your liking than our bill is presently. You heard the exchange between Senator Kerry and Senator Abdnor this morning about how we might make that more flexible. All of the points that you make for the reasons of flexibility are well taken.

So far as the term is concerned, I do not know, but I would agree with you on that. I do not know that the difference between 8 and 9 years is all that powerful. One way or the other, but it is certainly something that, as we go forward, we will look at.

Finally, one question. Well, two questions. No. 1, for example, a military base who combines a host of invitations to bid, they combine a host of things in their janitorial services and other things, for example, where minority businesses, for example, may be skilled in one but not all, and therefore are precluded. There may be a little method in the madness in doing that. Because, as you know, I have always said that the Forest Service likes big super-highways, and if I were driving a pickup truck through the forest every day, I would like it too.

Obviously, there is something here for the convenience of the people who are going to administer the contract, and not because they think they will get good service or more minority business.

Mr. MITCHELL. It is simply easier to administer one contract than a multiplicity of contracts.

The CHAIRMAN. Sure, but it defeats what we are trying to do in the Congress about assisting minority-owned businesses.

Mr. MITCHELL. It has a devastating impact.

The CHAIRMAN. Finally, is the law you mentioned a moment ago which sets out who is socially disadvantaged an exclusive list in that law?

Mr. MITCHELL. It spells out who is socially disadvantaged, that is under the original Small Business Act, and it means the categories. I think it is exclusive. I hope it is exclusive. I want it to be exclusive, because if you start constantly expanding, then obviously the people who need it the most are going to be cut back and cut back. I do not know what the interpretation is, whether it is exclusive or not. I think the illustrations provided in the Small Business Act should be interpreted as being exclusive.

The CHAIRMAN. I think the staff has just advised me that the law says the groups you listed are presumed to be socially disadvantaged.

¹ Material not available at time of going to press.

Mr. MITCHELL. Right.

The CHAIRMAN. Then I guess SBA and some of the contractors around the country may be in the Defense Department, and I guess SBA has taken the position that simply because those are presumed, anybody else who wants to take the burden of proving that they are in a socially disadvantaged group would have the right to do that.

Mr. MITCHELL. I think it is presumptuous on the part of SBA to assume so. [Laughter.]

THE CHAIRMAN. Well, you know, I have made flip remarks here this morning about being $\frac{1}{16}$ Cherokee, but I can tell you that qualifies people for a lot of things in this country. You know I do not want to get into that here, but that is absurd to me. That is an absolute absurdity to suggest that people, and obviously I am not in a socially deprived group, but I cannot imagine anybody, simply because of that one amount of blood in their stream, making them socially disadvantaged. That is an absurdity on its face.

Mr. MITCHELL. That is nonsensical. My grandmother was American Indian. Does that mean that I come in at one time to SBA and say look, I am an American Indian. I want the loan. And then I come back the next week and say I am black, and I want another loan because I am in another minority? No. I think you reach the point of assinineity when you start dealing with that kind of situation.

The CHAIRMAN. Parren, again, let me thank you for your splendid testimony this morning. I promise you your suggestions will be considered in depth in markup, and I wish you well in your new endeavor. The Committee is always anxious to hear from you on this or any other subject of interest to you.

Mr. MITCHELL. Thank you so very much.

The CHAIRMAN. Thank you very much for being with us this morning. Our next witness is the Honorable Robert P. Bedell, one of the bad guys from OMB we have been talking about.

[Laughter.]

He is the Administrator for Federal Procurement Policy, Office of Federal Procurement Policy of OMB. How does it feel to sit back there and hear your agency being lambasted, Mr. Bedell?

Mr. BEDELL. I just wish I had read that circular. [Laughter.]

STATEMENT OF HON. ROBERT P. BEDELL, ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC, ACCOMPANIED BY DR. ALLAN BURMAN, DEPUTY ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY; AND WILLIAM COLEMAN, JR., DEPUTY ASSOCIATE ADMINISTRATOR FOR LAW AND LEGISLATION, OFFICE OF FEDERAL PROCUREMENT POLICY

Mr. BEDELL. Yes, sir. On my right is Dr. Allan Burman. He is the Deputy Administrator of the Office of Federal Procurement Policy; and on my left is William Coleman, who is the Deputy Associate Administrator for Law and Legislation at OFPP. If I may, I would like to introduce my prepared remarks for the record and summarize them.

The CHAIRMAN. Your summarization will be most welcome.

Mr. BEDELL. And you asked me to keep my remarks to within 10 minutes, which would be a record for me if I am successful, but I am going to try. You have commented, and others have, that S. 1993 is not the perfect bill. My prepared remarks indicate that I agree with that assessment.

On the other hand, I do not think it is a bad bill either. I think there are some very, very positive features in it. It is a sincere effort at meaningful reform in a program that desperately needs it.

Your survey in 1987 demonstrates that there are very serious problems with this program. Senator Weicker's—I think—assessment is that if it were brought up on a vote in the House and Senate now, it would be defeated by a margin of 2-to-1. That indicates that the perception of problems with this program is widespread indeed.

We think S. 1993 is a vast improvement over the House-passed version, H.R. 1807. We think some improvements need to be made in S. 1993, and we have outlined what some of those are. But, we think S. 1993 is a sincere and a meaningful effort at solid reform.

We have been besieged with offers to work with you and other Members of the Committee and the staff on S. 1993. We would like to offer the same thing. We think, working together, serious reforms can be made and that they will make this program one that will realize the good intentions of those who began it, and sought to administer it well over the years, only to be frustrated by it.

I would like to point out a couple of things, if I may, that I think are crucial to the reforms intended by S. 1993. One is the requirement for competition. Your survey in 1987, Senator Kerry, showed that of the firms that responded to the survey, 25 to 30 percent of them are no longer in business. If that means that they cannot compete in the private sector, then the program is not preparing them to do so. Your efforts in S. 1993 to require competition while they are in the program, and to require increasing competition while they are in the program is essential to ensuring their success when they get out.

If you do not require competition, if you do not require increasing competition, you have no assurance whatsoever that the graduates of the program hereafter are going to be any more effective than the survey results that you ran indicate they have been. If that is the case, the wisdom of the continuation of this program is very, very seriously, I think, in doubt.

There has been some discussion about this \$1 million and \$2 million threshold for competition and what that means, and whether it is too high. The numbers that we have for fiscal year 1987 indicate that there were 13,000 contracts under the program; a little more than that—13,341, 8(a) contracts. Of that, 247 contracts were for \$2 million or more. 620 contracts were for \$1 million or more. In other words, only 2 percent of the contracts awarded in fiscal year 1987 exceeded the \$2 million threshold and something around 5 percent exceeded the \$1 million threshold.

Now the requirement for competition in S. 1993 would apply only for contracts which exceed \$2 million for most construction and services, and \$1 million for everything else. So, what that means is that 98 percent, well actually something around 95 percent, of the

participants in the program—based on fiscal year 1987 data—would not have been required to engage in competition for 8(a) contracts. My prepared remarks suggest that the figure of \$2 million and \$1 million should actually be lowered to require greater competition. Otherwise, at least 95 percent of the participants would not be affected by the requirement for competition.

Second—and again competition is critical—competition is critical from the standpoint of the procuring agencies. They are much more comfortable with the products they get, the services they get, and the procedures by which they get them, if competition is the basis by which they award these contracts; so, it is critical from their perspective as well in ensuring good products in a process which does not involve them in endless complexities. The one thing I must say in reading these two bills, which are 50 pages apiece, and the existing law, is that they are not simple. They are very complex, and that in itself becomes a problem of administration. I have a short example of some of the complexities that I found in S. 1993.

A second thing I think is critical, besides competition, is increasing the requirement for competition as the term of participation increases. I think that that is essential. I am not convinced, frankly, that this glidepath, if you will, toward competition in the private sector cannot be improved upon. It is not clear to me now how a firm, or how SBA, or how a procuring agency would go about assessing whether these percentages are actually being hit. There are consequences to not hitting those percentages, including penalties for falsely certifying that those percentages are going to be met.

You, as a participant, must certify that the contract will not put you over a particular percentage of your total business at the time of award. What if it is the first contract you get? Or is the requirement simply that the percentage will not exceed what you expect to get for that year, or succeeding years? If the latter is the case, my question is just how tight a competition requirement this is and whether this glidepath set of requirements is tight; and if you do not, again, have the competition, you have no assurances that these graduates are going to be successful. So, that is why I keep coming back to the requirements for competition. I think that is the key to the reforms in this bill.

The third thing—and I have spent a good part of my time at OMB reducing paperwork—is a little unusual for me, but I think that the information requirements here concerning this program are not adequate, frankly, and there is far more useful management information that should be demanded, both of the program participants and of SBA. I read, in preparation for this testimony, the last couple of the state of Small Business books that are put out by SBA. They are jam-packed with all kinds of data, but it is almost impossible to find the useful kind of management information that is essential for evaluating whether the program is working and what kind of corrections need to be made to it.

Your Committee had to go out and run a survey that I am not sure had ever been run before, trying to find out what happens to these graduates. Are they successful? What are they doing now? What did they think was right with the program and what did they think was wrong? That is the kind of management information

that I think this program needs on a current basis, especially if we are interested in seeing how the graduates are doing in the program, what their percentage of 8(a) contracts are and what their percentage of competitive contracts are.

I think, frankly, that the participants should be required to report that information. They should be required to report something like that that would be required in S. 1993, but that could be a very important key, in my view, to making the reforms in S. 1993 work. It may require some additional paperwork, but we will swallow hard in this instance.

My last point is with regard to the complexities. Just one example: Under the bill here, if there is a protest saying that a firm is not a socially and economically disadvantaged small business, then that would go to the regional administrator and there are two levels of administrative appeals, and then the Administrative Procedures Act would take over and grind the judicial system into that system. If, instead, you are not challenging that they are socially and economically disadvantaged, but they are not a small business, well that goes to another division of SBA.

Apparently, only one level of review is authorized there and then the Administrative Procedures Act comes into play. If the contract involves automatic data processing equipment subject to the Brooks Act, then a protest as to whether the procedures were followed, presumably whether it is socially and economically disadvantaged or a small business could also go to the General Service Board of Contract Appeals. In the case of a protest, and always when you have a protest, it could also go to the General Accounting Office, it could go to the agency involved or it could go directly to the courts.

In addition, the termination and graduation provisions and the eligibility challenges of S. 1993—again a vast improvement over H.R. 1807 in my view—would add yet another ground for a review of many of these same issues. Now, a participant cannot be really expected to understand all of that, nor can the SBA folks, for whom I have some sympathy in this regard as well. The complexity is so great that it is not hard to imagine why we had some of these problems with trying to carry out congressional purposes.

The last thing I would say in a reform bill of this nature is to really emphasize something that Senator Abdnor said. That is they have a lot of discretion. A lot of the trust that had been invested in SBA has not been carried out in the way that Congress, the administration, or the public has wanted. In a reform bill, I think that if we can agree on specific changes that should be made, they ought to be nailed down as specifically and concretely as possible rather than vest discretion in SBA or in others to do good things.

I think if we can agree that competition ought to be a major and principal element of the program, that we ought to require it in very specific terms. I would like to add that, as you well know, percentages and numbers can be very hard, and there is no substitute for good judgment. But the problem is that when we vest that kind of discretion with the hope that we will get that kind of good judgment brought to bear, we have been frustrated and, at this stage in this program, I think that if we can agree on reforms, that we ought to agree specifically and concretely and put it into the legislation.

That is all. I hope I stayed close to 10 minutes, and I would be glad to try to answer any questions you have.

[The prepared statement of Mr. Bedell follows:]

Statement of Robert P. Bedell
Administrator for Federal Procurement Policy
before the
Committee on Small Business
United States Senate
Concerning S. 1993
The "Minority Business Development
Program Reform Act of 1987"
February 2, 1988

Mr. Chairman, and Members of the Subcommittee:

As you know, the Office of Federal Procurement Policy in the Office of Management and Budget was created by statute in 1974 to establish Government-wide procurement policies, to provide executive branch leadership in legislative matters concerning procurement and to oversee the Federal Government's procurement regulations and regulatory systems. It is with these responsibilities in mind, that I am pleased to appear before you to discuss the views of the Office of Federal Procurement Policy, and the Administration's legislative position, on S. 1993, a bill that if enacted, would be known as the "Minority Business Development Program Reform Act of 1987."

Each year, President Reagan sets aside a special week to salute the many contributions of minority businessmen and women to our Nation. In proclaiming Minority Business Enterprise Development Week, 1987, the President recognized the significant role of minority businesses in our free enterprise system, stating that:

"By creating a limited form of government, our Constitution protects the inalienable rights of all Americans and ensures equal opportunity for all. Our free market economy springs from these principles....The more than 840,000 minority American entrepreneurs exemplify the success our economic freedom offers. These energetic business men and women inspire all Americans as they create jobs, bring new products and services to the marketplace, and enhance our quality of life." (Presidential Document, Federal Register, Vol. 52, No. 142, Friday, July 24, 1987)

Several Federal programs are in place to facilitate the growth and development of businesses owned by socially and economically disadvantaged individuals. Chief among them are the Small Business Administration's 8(a) program, which provides Federal contracts to such firms, and its Section 7 program, which provides other types of assistance, including, guaranteed loans, management assistance, and technical aid. There also are other assistance programs to assist small business. The objective of these programs is to help

participating firms to become sufficiently competitive to succeed on their own without further assistance.

Since the inception of the 8(a) set-aside program in 1969, the total dollar value of contracts awarded to minority businesses under it has grown steadily. In FY 1987, for example, approximately \$3.3 billion in contract awards were made through the Small Business Administration 8(a) program. This represents a 6 percent increase over FY 1986, when 8(a) awards amounted to \$3.1 billion.

During this Administration, the number of participants in the section 8(a) programs have increased from 1,900 in 1983 to approximately 3,000 in 1986, and at the end of 1986, another 2,400 concerns had applied for participation in the program.

The dollar value and number of section 8(a) contracts awarded to socially and economically disadvantaged small business firms have increased steadily during this Administration:

<u>Year</u>	<u>Contracts</u>	<u>Dollar Value</u>
1980	8,382	1,228,119,000
1981	9,940	1,710,169,000
1982	10,460	1,822,653,000
1983	11,167	1,924,214,000
1984	12,575	2,509,513,000
1985	13,787	2,687,642,000
1986	12,969	2,960,802,000
1987	13,341	3,219,347,000

The number of minority-owned businesses has increased 64 percent over the last ten years. Since the beginning of the economic recovery in 1983, minority self-employment has increased by 9.3 percent.

During fiscal year 1986, minority business contractors received over 400,000 contract awards from all Federal Government sources, with expenditures in excess of \$5 billion. This is a 20 percent increase over fiscal year 1985 when \$4 billion in Federal contracts were awarded to minority contractors.

The Small Business Administration's 8(a) program began with the enactment of the Small Business Act in 1953, when SBA was given authority to contract with other Federal

agencies and to then subcontract the work to small businesses. In 1969, the program was amended to provide Federal contracts and assistance exclusively to small businesses owned by socially or economically disadvantaged individuals.

After a period of approximately 10 years, during which time the program's effectiveness was frequently criticized, Congress enacted Public Law 95-507 in 1978. Public Law 95-507 gave the 8(a) program a firm statutory basis for the first time. Public Law 95-507 was intended to address several criticisms concerning the 8(a) program, including: the large number of contracts that had been awarded to "front companies;" and the failure of the 8(a) program to foster the business development needs for firms to become competitive in the private sector. The problem of "front companies" was addressed by requiring 8(a) firms to be at least 51 percent owned and operated by persons who are both economically and socially disadvantaged in order to be eligible for the program.

The problem of the failure to foster business development was addressed by creating the minority small business and capital ownership development program to provide management and technical assistance to minority businesses, such as assisting firms in developing business plans with

specific objectives and goals. This was intended to enable firms receiving assistance under the program to eventually graduate from the program and successfully enter and compete in competitive marketplaces.

In 1980, Congress further amended the 8(a) program in Public Law 96-481. This law required SBA to negotiate with each program participant a limit on the length of the firm's participation in the program. This change was intended to correct the problem that few firms actually were graduating from the program and going on to become viable independent businesses. SBA established, through regulations, a system of fixed program participation consisting of an original 5 year term, with a possible extension of 2 more years.

Although improvements have been made, serious problems still remain. S. 1993 is intended to address many of these problems, including: inequitable contract distribution among participating firms; inconsistent standards for extending a firm's period of program participation; unqualified and overextended field personnel managing the program; and a lengthy and cumbersome application and certification process. In addition, the program continues to be viewed as a contracts program rather than a business development program, and partly because of that, graduating firms all too frequently fail when they are required to compete in an

unrestricted market. And, the administration of the program is perceived as subject to inappropriate influence; and the discretion afforded to officials has sometimes led to abuse.

Mr. Chairman, problems have plagued the 8(a) program almost from the beginning and have been very resistant to correction. The perception -- and all too often the reality -- is that so few participating firms succeed after leaving a steady diet of sole source contracts, and the allegations of wrong doing by Government officials and programs participants are so pervasive, as to question whether the good intentions of the sponsors of the program can be realized.

The study conducted by this Committee (S. Rpt. 100-29) and the problems you and Senator Weicker cited upon introducing S. 1993, accurately describe a very serious situation.

The Administration supports your efforts to improve the Minority Business Development Program. We think that S. 1993 is aimed at the right problems and that its purposes are valid. In most regards, it is a better bill than the House passed bill, H.R. 1807. We do, however, have some concerns regarding some provisions of S. 1993.

Comments on S. 1993

Mr. Chairman, in your invitation letter you requested that I testify on behalf of the procuring agencies regarding the procurement aspects of the Minority Business Development Programs and furnish an assessment of the provisions of both S. 1993 and H.R. 1807.

I will leave most of the discussion of the management aspects of the proposed legislation to the Administrator of the Small Business Administration who will also testify during these hearings. Because involvement in the Federal contracting process is a critical part of the business development aspects of the 8(a) program and because many of the problems we are attempting to resolve concern the contractual aspects of the program, we must be careful to arrive at a balance between the need for a stable and effective 8(a) program and the need for efficiency and economy in the Federal procurement process. For example, we now know that reliance upon noncompetitive awards does not fulfill the objectives of the program or its participants or of the procuring agencies.

The executive branch supports the findings and purposes of Congress set forth in Title I of S. 1993. We also support the purposes of Title II of S. 1993, which would establish

the Division of Minority Business Certification within the Office of Minority Small Business Development and Capital Ownership Development. The Regional Offices of this Division would receive and be required to more rapidly evaluate applications for certification of prospective Program Participants. It would also establish a definite participation period that would commence (or for current participants has commenced) with receipt of a participant's first contract award under the provisions of section 8(a). We believe that a firm, fixed participation term will help achieve the purposes of the program.

We also support the emphasis on having participants graduate after this fixed period and agree that if a participant fails to retain eligibility or demonstrate progress towards becoming competitive, it should be removed from the program to make room for others.

We are particularly encouraged by S. 1993's emphasis on competition to help participants develop the skills and the know-how to compete effectively in the unrestricted marketplace. The Committee's survey of the 8(a) firms that had graduated from the program pointed out some very disturbing results about the ability of these firms to survive the rigors of the free market. We believe that the requirement that firms increasingly compete for other than

8(a) contracts during their participation in the program is an essential reform if the program is to meet its intended purposes.

Despite our support for these provisions and others in S. 1993, and while we believe that S. 1993 is a much better drafted and conceived bill than H.R. 1807, there are a number of provisions which we believe can be improved, and we would like to work with the Committee toward that end. For remedial legislation such as this, with many questioning the wisdom of continuing to support the program, there is good reason to be specific in the bill about what reforms should be made.

Section 304 of S. 1993 as drafted would inadvertently allow joint ventures between 8(a) firms and "any other business concern" to engage in price fixing, bid rigging and any other anti-competition action currently prohibited by the antitrust laws or the Federal Trade Commission Act. H.R. 1807 contains a similar provision. This immunity, modeled upon an existing provision in the Small Business Act for joint programs for research and development (15 U.S.C. 638(d)), raises several serious concerns.

First, no joint venture that is anti-competitive should be protected. Second, the proposal is decidedly regulatory;

initial and continuing approval of a joint venture would depend upon predictably expensive government oversight. Third, the standards for approval of a joint venture are broad and not well focused. Fourth, the scope of the immunity is vague and open-ended. Fifth, it is not clear that antitrust immunity is needed by 8(a) firms. Nor, is antitrust immunity the type of assistance that is likely to help 8(a) firms compete in the marketplace. Finally, this immunity is unlikely to ensure integrity, competence and efficiency in the program.

We also do not support the new no-year revolving funds or the new direct loan program in S. 1993. We believe that these are not critical to the major reform elements of S. 1993.

The procedures set forth in Section 401 of S. 1993, entitled "Development of Business Mix Emphasizing Competitive Contract Opportunities" is a promising new approach to preparing participants for the competitive world after "graduation" from the program. Under this provision, during the first four year period, a participant may be totally reliant upon noncompetitive Federal contracts. Certainly some time should be afforded to beginning participants to enable them to develop their business skills without full-scale, full-time, full and open competition. However, we

believe the bill should encourage participants to actively seek competitive business opportunities earlier in this period.

The limitations of 8(a) awards of 80 percent after 4 years of participation, 70 percent after 5 years, 55 percent after 6 years, and 25 percent after 7 years should help prepare participants for open competition, although the Administrator could reduce these limitations under certain circumstances. These requirements for progress in competing without depending on restricted competition for government contracts are critical to several crucial reforms of S. 1993, including continuation in the program, contracts during the year, and possibly criminal penalties. We support the concept, but we think the provisions could be tightened or several of the bill's reforms will fail.

It is important that each participant be afforded the requisite technical and managerial training so that it will be able to expand its business base beyond 8(a) contract awards. Without such capabilities, the purpose of these amendments will be frustrated. We do not, however, support increasing the program participation term of the program. The objectives of the program should be accomplished in a shorter period than the eight years which S. 1993 would provide.

Section 402 of the bill would amend section 16(a) of the Small Business Act to establish a new requirement that executive agencies forecast 8(a) contracting opportunities. As proposed by section 402, each agency that had total contract actions in excess of \$50 million in FY 86 must project for the next and succeeding fiscal years the contract opportunities for 8(a) firms, and specify the anticipated time of issuance of each procurement, the responsible program office and the responsible contracting activity. Although this information would undoubtedly help planning in the program, this forecasting requirement may impose such significant burdens on contracting agencies that it may not be worth it.

The provisions for contract award in section 403 would continue the current practice of the SBA of awarding a noncompetitive 8(a) contract to a participant that identifies a contract opportunity at an agency. This provision would also authorize the Administrator to direct an award of any contract to achieve an equitable distribution of contracts among regions and participants. We support having more program participants benefit from the available contract opportunities. At the same time, it is important that the more energetic participant not be discouraged from actively exercising marketing skills to seek contract opportunities

with the agencies. We should encourage the participant that makes the contact with the procuring agency and which has demonstrated its ability to respond to agency needs. We suggest that before directing an award to another participant, that the Administrator be required to consult with the affected agency.

New paragraph (18)(D) would make a participant ineligible for the award of a contract on a noncompetitive basis if the expected award price exceeds 150 percent of its largest prior contract unless a waiver is granted by the Assistant Regional Administrator. The basis for the 150 percent limitation is not clear to us, but it may be a useful "rule-of-thumb" particularly if the SBA can waive the limit where warranted.

New paragraph 18(E)(i) would require competition for 8(a) contracts if at least two eligible participants may submit offers at a fair market price. This competition would be required only for procurements that would be expected to exceed \$2 million for supplies and services or \$1 million for other purposes. We fully support the concept of competition between program participants. We urge that this competition occur on more 8(a) contracts.

We support the purpose of the contract performance requirements in section 404 of the bill and the termination provisions, but believe they can be tightened further to adequately protect the integrity of the program and the interests of the procuring agency.

We also support the purposes of Title V of S. 1993 to emphasize the need for integrity in the conduct of these programs by both Government officials and by program participants and candidates. We believe that the sections requiring reports and data to be submitted by participants, and acquired and analyzed by SBA and the procuring agencies, are very important, and may be a means to significantly improve the reforms intended in the bill.

We do not see the need for the amendments to sections 15(g) and (h) of the Small Business Act that are set forth in section 601 of the bill, which would require the President to establish and report on the attainment of annual goals for contract awards to small business concerns and small business concerns owned by socially and economically disadvantaged individuals. We consider the present system for establishing such goals to be sufficient.

Although the percentage of contract dollars awarded to small business has averaged about 20 percent, for several

years, and while the percentage awarded to minority businesses has increased, we do not know why it is realistic to believe that a statutory goal of 20 percent until FY 1993, and then 25 percent for FY 1994 and beyond, can be met. It is very doubtful that they can be met if awards to socially and economically disadvantaged businesses are not counted, as S. 1993 provides.

There is even less reason to believe that the proposed 10 percent goal for small businesses owned by socially and economically disadvantaged individuals can be met. While we support the intent of these provisions to increase the participation of such businesses in Federal procurement, unrealistic goals may simply frustrate the agencies and the program participants and promote cynicism about the purposes of the program.

We also believe that the amendments of section 603 that would impose a liquidated damages provision in all contracts in which a subcontracting plan is required may be too stern. This could lead to more conservative subcontracting goals and to possibly higher overall costs to the Government. An emphasis on increased administration of contracts containing subcontracting plans could achieve greater results without the potential of increased costs.

Comments on H.R. 1807

Mr. Chairman the Administration did not object to passage of H.R.1807 by the House of Representatives, but in our floor statement regarding the provisions of H.R. 1807, we made it clear that we did not support several of its provisions and would seek amendments to H.R. 1807 in the Senate. A copy of the Statement of Administration Policy is attached for the Committee's information.

In general we believe that S. 1993 is a substantial improvement over the House passed H.R. 1807. Many of the troublesome provisions of H.R. 1807 are not included in S. 1993.

For example, section 7 of H.R. 1807 would amend section 7(j) of the Small Business Act to provide 8(a) firms with up to two exemptions to the Walsh-Healey Act (41 U.S.C 35 to 45). These exemptions would permit a participant who is neither a manufacturer or regular dealer in supplies to receive a contract to provide such supplies. We oppose these exemptions and believe that in order to receive 8(a) contracts a participant should have established its business structure and should have begun its business activities prior to admission to the program. These exemptions may well have detrimental effects on other small business competitors.

This provision is not included in S. 1993.

Similarly, section 7 of H.R. 1807 would authorize exemptions from the performance bond requirements of the Miller Act (40 U.S.C. 270a to 270f). The purpose of these bonds is to ensure that the project will be completed if a contractor defaults in performance. Such a default by a participant in the absence of a bond could have an adverse effect on the procuring agency's ability to carry out its mission in a timely and cost effective manner. We do not support this exemption either.

We fully support a requirement that participants compete for contracts including contracts awarded under section 8(a) and that all 8(a) contracts not exceed a fair market price. We believe the provisions of section 11 of H.R. 1807 and section 403 of S. 1993 are substantial improvements to the program. Both bills would require competition of proposed contracts estimated to exceed \$2 million for manufacturing construction and services and \$1 million for other procurements. We urge that competition be required at lesser dollar amounts. Using the \$2 million threshold, at most 247 procurements could have been competed during FY 87. At the \$1 million threshold the number of procurements eligible for competition would have been only 620.

Section 12 of H.R. 1807 defines at some length a "fair market price" for a procurement that is offered to the Administration for award to a participant. We note that these provisions are similar to the Federal Acquisition Regulation provisions for cost and price analysis. This section would also provide for a participant's appeal from an agency's determination of the "fair market price." The agency could be required to provide a written report of the method it used to determine the "fair market price." The participant could then protest such methodology to the Administrator who, if he agrees with the protest, could then appeal the decision to the agency for decision. We are concerned that this provision could delay agency procurements and contribute to an adversarial relationship between procuring agencies and participants.

Finally, we object to section 16(c) which requires that the contract be terminated for the convenience of the Government, if the owner upon whom program eligibility is based subsequently relinquishes ownership or control of the concern. This requirement fails to consider the impact of such a termination on the program of the procuring agency. In many cases continuing performance may be in the best interest of the Government. We prefer the contract performance requirements of section 404 of S. 1993, which requires termination for default where the participant does not

perform the contract. This provision may be waived if the contract is to be transferred to another responsible participant or if the head of the agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of program objectives and requests that the Administrator grant such a waiver.

These are not all of the concerns that we have with H.R. 1807 and we have several suggestions for improving S. 1993.

While most of my testimony discusses concerns with S. 1993, we support your reform efforts and hope to work with you in making S. 1993 a better product, and thereby the 8(a) program a program that does not need reform.

I will be glad to answer any questions you may have regarding my testimony.



STATEMENT OF ADMINISTRATION POLICY

November 23, 1987
(House)

H.R. 1807 - Capital Ownership Development Reform Act (Mavroules (D) Massachusetts and 36 others)

The administration has no objection to House passage of H.R. 1807, which concerns the Small Business Administration's (SBA) Capital Ownership Development Program and the section 8(a) set-aside program, but will seek amendments in the Senate. These would include amendments to:

- delete the provision in section 7 that would establish a training program for employees or potential employees of 8(a) firms, which would be costly and duplicative of the job training assistance provided under the Job Training Partnership Act and vocational education programs;
- delete the provision in section 7 that would establish new direct and guaranteed loan programs for 8(a) firms, which would duplicate SBA's existing lending program;
- delete the provision in section 19 that would enable firms that exceed the small business size standards by up to 25 percent to bid on Department of Defense contracts that are set aside for bid by small businesses owned by socially and economically disadvantaged individuals;
- delete the provision in section 16 that would require the SBA Inspector General to keep congressional committees duly informed of the details of an ongoing investigation, because such a requirement raises separation of powers and due process concerns;
- delete the provision in section 7 that would provide for a waiver of the Miller Act, a law administered by the Department of Labor which requires payment bonds to protect wages of workers on Federal construction contracts; and
- delete provisions in sections 5, 6, 8, and 15 that would extend, and establish in statute, a firm's eligibility to participate in the 8(a) program from seven to nine years. Such an extension would (1) limit SBA's flexibility, (2) restrict the number of minority firms that could be assisted under the program, and (3) limit the number of firms that could compete for available procurements.

The CHAIRMAN. Well, that was a very articulate statement, Mr. Bedell. I must confess to you, and I am sad to confess, that I did not realize there was an antitrust exemption in this bill, or that previously existed apparently. It is just a restatement of existing law.

Mr. BEDELL. It is somewhat similar. That is an R&D exemption, as I understand it.

The CHAIRMAN. This is for R&D only?

Mr. BEDELL. The existing one is for research and development activities and I can actually see some reason for that, of small firms or even larger firms getting together jointly and participating in research and development and then making sure that there are not antitrust problems. The provision in S. 1993 is substantially broader than that, and we were concerned about that.

The CHAIRMAN. Because I favor antitrust exemptions on research and development generically throughout the country, I think it would be one good way that we could do a better job of competing with the Japanese, for example.

Mr. BEDELL. I think there is a lot of potential there.

The CHAIRMAN. But are you saying that under the legislation, it is much broader than that?

Mr. BEDELL. Yes, sir.

The CHAIRMAN. It allows bid rigging and that sort of thing?

Mr. BEDELL. It is an exemption from the antitrust laws and from the Federal Trade Commission Act, and no actions or inactions of an 8(a) firm and any other business under this bill would apparently be subject to the antitrust provisions of the FTC Act. Now, I am sure that it was not intended to permit those activities. The provision, however, as we read it, would permit those activities. If there is a case to be made, I do not think it has been made, at least I do not know of it. In the absence of that case being made, we ought to be very wary of exemptions from the antitrust laws.

The CHAIRMAN. Staff tells me this has to be approved by the administrator and justice both.

Mr. BEDELL. Right.

The CHAIRMAN. Is that correct?

Mr. BEDELL. It is correct.

The CHAIRMAN. You do not consider that a sufficient safeguard?

Mr. BEDELL. Well, once again, we are dealing with reform legislation here, and unless there is a good reason why we should say that the antitrust laws should be waived, I do not think we ought to have the authority to waive them. I think there is a case to be made for research and development, but that is the law right now. I do not know of a case, or of the case to be made, saying that there ought to be discretion to waive the antitrust laws more broadly than that. If there is a case to be made, we would be glad to listen and to tell you what we think.

The CHAIRMAN. Do you have any objections to joint ventures of 8(a) firms?

Mr. BEDELL. I do not.

The CHAIRMAN. If the contract is too big for one, two of them together might pull it off?

Mr. BEDELL. Right.

The CHAIRMAN. Do you object to once they do that then certainly they would have to agree on the price, would they not? In other words, if two were allowed to form a joint venture, it certainly would follow that they would have a right to discuss between themselves what their bid ought to be. You have no problem with that point?

Mr. BEDELL. I do not think so, but the further you go into what they can do as a joint venture, the more I would like to talk to the antitrust division and some other experts to make sure. That is within their realm of expertise, far more than it is mine, but I do not have a problem with joint ventures. I think basically my statement on the antitrust implications reflects that of the Department of Justice and the antitrust division in particular.

The CHAIRMAN. Well, let me say that I have only been Chairman of this Committee a little over a year. I have been on this Committee for many years, but I have not heard of any questions being raised about that being a big problem, this antitrust exemption. What we are trying to do is to reform this to take care of the abuses that have been evident and some that are potential. As I say, that is not one of the things we took into consideration in drafting this bill simply because it apparently has not been a problem.

Mr. BEDELL. It did not seem like one of the major elements of the reform to us either, sir.

The CHAIRMAN. You heard the comments about the OMB circular this morning. Have you seen the circular?

Mr. BEDELL. I may have seen it. I must say this is the first comment of that nature that I have heard on it. I think it is a proposed reform to the circular, is it not?

Dr. BURMAN. Perhaps I could add something. I believe that is procurement under grants, and I believe that the changes that were made in that circular were basically to provide more flexibility to those getting the grants to be able to use those grants as they see fit. In other words, I believe the purpose of the circular was to try to eliminate some of the restrictions that the Federal Government has placed on those receiving the grants.

I do not think that there was a specific intent along the lines of what Congressman Mitchell mentioned, so I think we would have to take a look at that from that perspective. It is really another part of OMB that is responsible for that particular circular.

The CHAIRMAN. Well, we will probably have at least two and maybe three hearings on this. We probably will ask somebody from OMB. If that thing really raises red flags around here, we may ask OMB to come back and talk to us about that.

Mr. BEDELL. Fine. We will, if you would like, send up what information that we have on it as well as information explaining what the changes are and what the purposes of that change are. It is, as I recall—as Al described it—a requirement that OMB places on grantees with regard to how they contract with the funds that they have received. This, I think, was just a removal as we are continually trying to remove restrictions that we place on the States on how they use the funds.

The CHAIRMAN. Mr. Bedell, I may have two or three questions in writing that we may submit to you and ask for your prompt response for those.

Mr. BEDELL. I would be glad to, sir.

The CHAIRMAN. Mr. Bedell, I thank you for being with us this morning and for your very articulate statement. Our next witness is Mr. Ray Kline, president of the National Academy of Public Administration. Mr. Kline, would you introduce your associate, and then you may proceed with your testimony.

STATEMENT OF RAY KLINE, PRESIDENT, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, WASHINGTON, DC, ACCOMPANIED BY THOMAS D. MORRIS, PROJECT DIRECTOR, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Mr. KLINE. Yes. I have with me Mr. Thomas Morris, who is the Academy's project director in examination of the 8(a) Program at the request of the Administrator of SBA. It is a pleasure to be here today.

The CHAIRMAN. First, let me say your formal statement will be inserted in the record, and we appreciate your summarization of that statement.

Mr. KLINE. Thank you, sir. We would also like to enter into the record a copy of our study report, which we provided to the Administrator last fall upon the conduct of this study. As you know, the Academy was chartered by Congress to look at problems of Government and to respond to requests by Government agencies to look at their particular problems.

On that basis, Mr. Abdnor approached us last fall to conduct an examination of the Minority Capital Ownership Development Program for him, and Mr. Morris here is the man who conducted the detailed evaluation by examining the issues at headquarters and in the field of the SBA and also talking to the client agencies who are involved in the program as well.

I think that in the interest of time, I would like to turn to Mr. Morris and let him give you a capsule readout of what the extended statement you have before you contains, and entertain any questions you may have.

Mr. MORRIS. Thank you, Mr. Chairman. Mr. Chairman, our contribution, we hope, will be of a slightly different dimension. It is a study of the internal management of this program, both at headquarters and in the regions and district offices, as well as among the buying agencies here in Washington, and some of the associations. We did not attempt to enter into programmatic problems of the type you are trying to deal with largely in S. 1993.

We thought you might be interested in some of our observations and proposals to the Administrator as to how to improve internal management. We talked to over 100 people, half of them in the field where we were able to sit down one-on-one with them and see them do their work and ask them questions as they proceeded. We found a program of extraordinary complexity from a management point of view. There are some 346 people serving 3,000 certified 8(a) firms. Last year, they awarded 4,200 contracts valued at \$3 billion. That is a tall undertaking.

In addition, we have in the field two kinds of people. One is the Contract Specialists, who hold the hands of our 8(a) firms that have not done business with the Government before, teaching them how to do a negotiation; and we have another group, and the group we are most concerned with, called Business Opportunity Specialists (BOS). Their role is to counsel and advise, much like a management consultant would do, these new firms on how to do their marketing, how to make financial plans, how to deal with the banks, how to overcome technical problems such as production and quality control, and how to organize and manage the business.

It is indeed an extraordinary requirement placed on ordinary folks at middle levels who are highly motivated to want to do a fine job. We found there were a number of things that Mr. Abdnor and his staff ought to try to do better. It is going to take a few more people in management to do this. Overall, there are 15 ideas, but there are three key objectives. I would just like to mention them briefly.

The first key objective is more effective portfolio management, the portfolio being that collection of 8(a) firms which is assigned to a Business Opportunity Specialist. He is the account executive, as it were, for those assigned firms. We find there are many ways in which to make that portfolio a more productive one, such as by specializing it by type of business, such as by separating out from the Business Opportunity Specialist duties the review of new applicants, and the contracting program itself.

We think that there is a big opportunity here. We think that the agencies of Government who contribute to contract opportunities can do a much better job, as well, in working with SBA; and that the two ought to get together more on a partnership basis.

A second key objective is to increase the effectiveness of our workforce. The highest long-term results, we believe, in the outcomes of this program, will come from making our people more knowledgeable and skillful out on the frontline. We are making real progress in training our Contract Specialists, but not our Business Opportunity Specialists. This weakness cries out for attention.

The third key objective that has been mentioned here several times this morning is the need for improved accountability. We found SBA officials especially aware of the need for better score-keeping on how the program has succeeded, and is succeeding, with respect to those applying for certification, those in the program, and those who have graduated. Our database just is not equipped to do this. Not only is the data inadequate, but you are going to need an analyst to take the data when it is collected and study it and find out what it means to management.

So, our hope is that what we have suggested will work well under today's statutes, but equally well and perhaps even better under the kind of reforms that you and the House are now pursuing. We do advocate testing many of the more controversial ideas, or those on which there is less certainty as to the right solutions. We think that SBA ought to be encouraged under your oversight to conduct such tests in a way that makes good sense. We would be pleased to answer any questions you might want to ask us.

[The prepared statement of Mr. Kline follows:]

Testimony By

**Ray Kline, President
and
Thomas D. Morris, Project Director**

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION (NAPA)

Before the

**Committee on Small Business
United States Senate**

**NAPA Study for SBA Entitled:
"Management Review: Organization and Operation of the
Minority Small Business and Capital Ownership Development
Program." November 1987.**

February 2, 1988

Mr. Chairman and Members of the Committee:

We appreciate this opportunity to appear before you in connection with your proposed revisions in the Minority Small Business and Capital Ownership Development Program (MSB/COD), embodied in S. 993 introduced on September 21, 1987.

The National Academy of Public Administration was privileged to make a review for Administrator James Abdnor in the fall of 1987 focused specifically on the organization, staffing and management of this program, but only incidentally on the numerous program policy issues embodied in S. 1993.

We endeavored in our four month review to make a fresh and objective assessment of the opportunities for improving operating efficiency in meeting the needs of the socially and economically disadvantaged small businesses which are certified by the Associate Administrator for MSB/COD under existing statutes and regulations.

I would like in this statement to cover, very briefly, four points:

- First - How we made this review
- Second What we found
- Third The key opportunities for management improvements
- Fourth Those parts of S.1993 which appear most relevant to our findings from a management perspective.

How We Made This Review

We began by a review of past studies and reports over the past twenty years, and then examined today's Standard Operating Procedures (SOPs) — a volume of over 400 pages.

But our most important fact finding consisted of on-site visits and discussions with the people doing the work, both at Headquarters and in the field. Altogether we went to 13 District Offices in six Regions. In addition we visited the Small and Disadvantaged Business Utilization offices (SADBUs) located in 12 major agencies here in Washington; and we talked with officials of three associations.

Altogether we spent substantial time with over 100 people. Over half of our effort was with front-line workers in the field. Some of these people are the Contract Specialists who help arrange Federal contracts for the minority firms certified to receive Section 8a set-aside awards, where SBA serves as the prime contractor and subcontracts with the certified firms. But the field specialists with whom we spent the major time are the Business Opportunity Specialists. These are the SBA employees who give overall assistance to the certified firms under the authority of Section 7j of the Small Business Act — with the objective of assisting them, in myriad ways, to become competitively viable enterprises.

The above work was performed by an experienced NAPA Staff team which reported to an Academy Panel of seven long-term management experts.

What We Found

We found a program of extraordinary complexity, manned by a staff of exceptional motivation in 66 field offices. The total MSB organization of 346 people at the time of our study was responsible for assisting 3,000 certified firms, and managing the 8a contracting process which in 1986 totaled 4200 contracts with a value of \$3 billion.

To do these tasks we expect our field force to be highly sophisticated in Federal contracting, both Defense and civilian agencies. Those who are authorized to execute 8a contracts must have had several hundred hours of training and meet standards as high as those required in major Federal agencies.

But even more complex is the job of the Business Opportunity Specialists, most of whom are expected to be expert management consultants in a wide variety of businesses. This assignment would be difficult for a group of MBA graduates from Ivy League schools. Yet we are expecting many of our GS-9, 11 and 12 personnel — many without previous business experience or college training — to cope with such duties under abnormally heavy workloads. And the prospective applicants for such services number in the thousands.

There are only a few field offices of size: Washington, D.C., Newark, New York, Chicago, San Francisco and Los Angeles. Many of the field offices are manned by only one or two personnel. In serving 8a clients, the field staff must work with management assistance contractors (under section 7j), other SBA programs, Federal buying offices, colleges and universities, Chambers of Commerce, State and Local Governments. Hence our minority small business personnel in the field are constantly in the spotlight — and some say "on the hot seat." We cannot stress too strongly the importance and the difficulty of the role played by MSB's field personnel in 66 Regional and District offices.

How Can SBA Do a Better Job of Managing This Program?

There are no easy solutions. We have spelled out fifteen ideas in our report which are summarized in the attachment to this statement. In summary, they describe ways in which SBA leaders can make three overall improvements.

First - more effective portfolio management

This means that we must assign to our Contract Specialists and our Business Opportunity Specialists more manageable workloads in terms of number and type of clients. It also means that we must look to Federal Agencies to do their full share of setting aside contracts for award to minority small businesses.

We conclude that SBA should designate certain of its key staff as "Coordinators of Marketing," both to stimulate 8a applicants whom we can effectively assist, and to sustain the flow of contract opportunities to meet the needs of the District portfolios.

Second, enhanced workforce effectiveness

The highest long-term payoff will result, we believe, from increasing the knowledge and skills of our front-line field personnel. A fine job is being done at present for Contract Specialists and there are many excellent courses of training in Federal contracting.

The same is unfortunately not true of the Business Development program which calls for a wide range of skills in financial planning and analysis, marketing, organization and management. A major part of our teaching materials in these subjects must come from SBA's own day-to-day experiences — i.e. from case studies. This is a large responsibility and calls for full time attention both at Central Office and in many of the Regions. We recommend that this be the role of a top level "Director of Workforce Effectiveness" who has an exceptional grasp of the MSB Business-Development program, and its requirements on the front-line.

Third, improved program accountability

We found SBA officials especially aware of the need for better scorekeeping on how the program is succeeding. There is a need to watch trends in all workloads from month to month — especially in the eligibility area — and a need to summarize the progress of firms toward graduation, and their progress after graduation. The development of data bases and systems is so important that we recommend a top-level "Director of Management Information systems" for MSB.

Finally, we urge that the Administrator be able to look to his Associate Director for MSB/COD to be accountable for program results nationwide.

Relationship of the NAPA Study and S. 1993

Under our contract with SBA it was our purpose to make recommendations which Administrator Abdnor and his key staff could implement under existing statutes. Hence we made no recommendations for statutory change.

At the same time we recognize that the strong support and continuing review by the Congress is essential and the source of major directives for improvement.

We are especially pleased to note that S. 1993 stresses:

- The role of the Associate Administrator and the need for career-continuity leadership.
- Clearer goals and accountability for set aside contracts from the buying agencies.
- More manageable workloads and higher skills for the Business Opportunity Specialists.
- More vigorous business development activities.
- More timely performance of the eligibility process.
- Augmented personnel resources to cope with the improved performance in eligibility and business development workloads.
- A comprehensive management information and reporting system to SBA management, the President, and Congress.
- Greater stress on prohibited actions.

In our recommendations we urged that SBA consider a policy of testing various ideas for improvement in selected Regional and District offices before requiring nationwide revisions. Some of the areas which appealed to us as candidates were:

- Expediting the Eligibility process.
- Dropping or more tightly controlling Advance Payments.
- Dropping, modifying, or more tightly controlling Business Development Expense grants.
- Clarifying the SBA role as prime contractor.
- Further exploring the advantages and disadvantages of centralized contracting functions at the Regional level.
- Introducing competition into the Business Development Plan.
- Increasing attention to the MSB/COD Program by the Inspector General.
- Using creative career development techniques.
- Organization innovation.

Our purpose in calling your attention to these suggestions for testing is that Congress might also wish to encourage tests of alternative ideas for improvement before legislating definitive regulations in some areas. In any event, Congress should require SBA to report back regularly on the experience in introducing reforms and to recommend revisions in statutes where indicated. We hope that the program can continuously encourage innovation while insisting on controls that will avoid fraud, abuse and waste.

We will now be pleased to answer any questions, Mr. Chairman.

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01/28/88

**MANAGEMENT REVIEW:
ORGANIZATION AND OPERATION
OF THE
MINORITY SMALL BUSINESS AND
CAPITAL OWNERSHIP DEVELOPMENT PROGRAM**

**A Report for the
Small Business Administration
(Under Contract No. SBA-2084-ADAMA-87,
Dated July 24, 1987)**

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

November 1987

EXECUTIVE SUMMARY

In its review of the organization, operation and staffing of the Minority Small Business and Capital Ownership Development Program (MSB/COD), the National Academy of Public Administration (NAPA) Study Team found it a challenge to suggest strategies and priorities from among the many good ideas being discussed both in and outside of the Small Business Administration.

The principal objective of Sections 7(j) and 8(a) of the SBA statute is to provide assistance to socially and economically disadvantaged individuals who own small businesses, and thus promote their viability in the competitive market place.

Emphasizing SBA's Role in Business Development

The NAPA Study Team believes that better portfolio management is a key to emphasizing SBA's role in business development, rather than just assisting 8(a) firms in acquiring contracts. The Study Team thus recommends that SBA:

- 1) Analyze at least annually all Portfolio Managers' assignments and the condition of their portfolios.
- 2) Establish five-year goals for portfolio development in each District.
- 3) Establish National and Regional "Coordinators of Marketing" to oversee national buying contract support and plan more systematically for future 8(a) portfolios. The Study Team believes that a nationally coordinated effort would permit Business Opportunity Specialists (BOSs) to devote more time to their business development roles.

Creating Synergy Among SBA Programs

The 8(a) Program is not well enough integrated with the rest of SBA and the federal buying agencies. The Study Team recommends that SBA:

- 4) Form a "Council of SADBUS" (Small and Disadvantaged Business Utilization Offices/Directors) at the National level to encourage effective Agency support of the MSB/COD Program and to increase contract support throughout buying activities.
- 5) Inaugurate a collaborative relationship between the SBA Associate Administrators for MSB/COD and Procurement Assistance, and their field associates, the Procurement Center Representatives (PCRs). The Study Team noted that when the PCRs' attitude toward 8(a) is negative this carries over to buying agencies. SBA needs to present a cohesive image to the federal agencies as it implements the Office of Procurement Assistance programs in which MSB shares goals, set-asides and subcontracting.
- 6) Encourage Regional Administrators to hold "Partnership Workshops" with Associate Regional Administrators and District Directors to foster optimum meshing of services in support of the MSB/COD Program.

Enhancing Workforce Effectiveness

SBA needs well qualified staff, distributed throughout the organization so that they can provide the best service to small businesses and federal agencies. While the MSB staff is highly dedicated, it is clear that some BOSs do not have adequate skills to counsel 8(a) firms. Many lack college training or direct experience in the business community in the very areas in which they are to provide assistance — management, marketing, financial analysis and planning, procurement and technical matters. SBA is developing a Career Development Training Program for BOSs, but it does not appear to be adequate.

The NAPA Study Team thus recommends that SBA:

- 7) Appoint a full-time "Director of Workforce Effectiveness" to oversee training and career development for entry-level and senior, front-line staff.
- 8) Broaden the MSB Procurement Career Program to the "Procurement and Business Opportunity Specialist Career Program". The systematic approach for procurement area training suggests that the same expertise can make an

immediate contribution to the broad needs of MSB, including the procurement segment already in place. The Board which administers this training program could set certification standards for BOS/Contract Specialists, define staff training needs (relating them to client needs) and suggest potential training sources.

The Small Business Administration has a wealth of sound experience among its staff, and can do more to share it throughout the organization. The Study Team encourages more cross-fertilization through workshops and other appropriate mechanisms. To better do this, the Study Team recommends that SBA:

- 9) Continuously assess client needs as a basis for designing 7(j) awards and sharing experiences among MSB Business Opportunity Specialists.

Functional Management Approach Can Work

As an organization with 10 regions and 66 field offices, SBA has a decentralized management structure. This makes strong national leadership and continuous communication important, and means SBA needs to ensure a climate for sound management accountability.

The Small Business Administration needs good communication and information systems so it can determine whether units are meeting their objectives and doing so efficiently. The Study Team recommends that SBA:

- 10) Assure that the Associate Administrator for MSB/COD has a strong voice in appointing counterpart staff at the Regional and District levels. If necessary the Administrator himself should be brought into the decision. The Administrator must assure selection of candidates who are highly qualified.

The 8(a) Program needs accurate data on participants and graduates. The existing data base is not sufficiently current and complete for field use, and MSB does not have a manager devoted to systems design and use. The Study Team thus recommends that SBA:

- 11) Appoint a full-time Director of Management Information Systems and Budget to develop the MSB systems design and to coordinate systems improvements now in process. The person should also design and implement the budget planning and execution system.

Testing Ideas for Change

A key aspect of sound management is adaptability. Changing SBA's 400-page Standard Operating Procedure is a time-consuming process, and probably must stay that way to permit the Agency to weigh the impacts of change on clients, contracts and District Offices. The Agency needs a process to permit it to "test" ideas for change and provide a procedure to promptly implement those judged to produce more effective results. The Study Team thus recommends that SBA:

- 12) Encourage selective testing of imaginative ideas, under the direction of the Deputy Associate Administrators for Policy and for Operations. Some of the ideas would also enhance MSB/COD client services, while others would enhance accountability within the organization. Among the "test candidates" the Study Team would highlight are ideas to: expedite the client eligibility process; reduce the backlog of applications; evaluate the MSB role as prime contractor and introduce competition into the Business Development Program.

An important aspect of accountability is management review of ongoing activities. The Study Team believes that, in addition to SBA's excellent Computerized Internal Control Review (CICR) program, its Inspector General should more methodically examine MSB/COD programs to help the Associate Administrator for MSB/COD identify areas of vulnerability needing immediate attention. Currently, the Inspector General has such a limited number of staff that this is not practical. The Study Team suggests that enhanced Inspector General resources could be targeted directly to improving MSB/COD Program controls.

Professionalizing MSB/COD Image and Operations

The public is not aware of the many successes of the MSB/COD activities or the importance of the roles played by SBA, the Department of Commerce and the

numerous federal buying agencies. Unfortunately, when the 8(a) program gets media attention, it is to highlight the occasional examples of fraud, abuse or waste.

The Small Business Administration can do more to let the public know of its successful activities. The Study Team thus recommends that SBA:

- 13) Seek public understanding through highly professional publications and exhibits of the MSB/COD Program and its achievements. This report offers several specific ideas.

The politicization of individual SBA decisions is far more difficult to address, but it is very real. In response to a recent questionnaire, 74 percent of the District Directors answered "yes" to the question: "Is the MSB/COD Program overly influenced by political considerations?"

The Study Team believes that SBA can best address this by professionalizing its own activities. When management systems are sound, staff are well trained, and 8(a) firm selection criteria evenly applied, SBA is in a stronger position to deter interference from outsiders. The place to start is with staff training. The Study Team wishes to again stress that when Business Opportunity Specialists are themselves more fully trained in business skills they will be better able to counsel clients and interact with federal buying agencies. This enhanced level of professionalism will be reflected in the MSB/COD Program results.

To further professionalize staff, and help them cope with the barrage of letters and phone calls they sometimes encounter from highly placed officials, it would be useful to provide additional emphasis on the SBA Code of Conduct and general professional ethics. The Study Team thus recommends that SBA:

- 14) Stress the orientation of all personnel in the Code of Conduct (SOP 37-35) and in rigorously observing ethical standards. These items could be added to the Career Development Program for BOSs.

To permit SBA to do the research and planning necessary to assess its activities and plan for change, the NAPA Study Team recommends that SBA:

- 15) Consider using a portion of the 7(j) funds to sponsor and support a dedicated "Management Research Institute" with a long term charter.

Looking to the Future

The Study Team firmly believes that SBA is willing to improve its MSB/COD Program and is taking steps toward so doing. It offers these recommendations to SBA as part of its blueprint for action in making the 7(j) and 8(a) programs fully effective mechanisms for assisting socially and economically disadvantaged small businesses.

The CHAIRMAN. Mr. Morris, that is a very interesting study you have done. I wish we could update that and perhaps refine it so that you could do a similar study based on an analysis of S. 1993. How many employees did you say they have in the 8(a) Program?

Mr. MORRIS. We counted 346, sir, full- and part-time, at the time of our effort.

The CHAIRMAN. Well, our statistics then is that there is about 1 for every 39 businesses, is that correct? No, that is not right. There are only 3,000 8(a) contractors, is that not right?

Mr. MORRIS. Sir, it is very difficult to relate that ratio to this gross number because we are including secretaries, we are including specialists—

The CHAIRMAN. You are not just talking about business opportunity specialists?

Mr. MORRIS. That is correct. The 1-to-39 is probably a fairly accurate ratio for the Business Opportunity Specialists by themselves.

The CHAIRMAN. Would you consider that entirely too heavy a workload for this program?

Mr. MORRIS. Yes, sir, but the thing one learns is that there are 66 district offices and 10 regional offices where work is done. We find that there are great differences between districts in the types of 8(a) firms that they have to work with and in the types of contracts that Government agencies make available to them.

So, that overall ratio can be misleading when you get down to where the final level of the district office itself is concerned. We think as an overall figure, the 1-to-20 ratio is a very sensible one for the Business Opportunity Specialists. It will help better plan staffing for the future.

The CHAIRMAN. It is, I suppose, a little unusual. We have set out a 20-to-1 ratio in the bill. Normally, we would not legislate things like that, you know, and I am not sure we should. But, if the problem is persistent and has not been addressed administratively, then this is maybe the only way we can deal with it.

It may be also that a whole host of these problems could have been avoided if we had had closer supervision and closer working relationships between the BOS and the firms they were dealing with. Did you find in your study, or did you take into consideration, whether or not these positions are largely political or not, whether the jobs had been obtained or held on political bases rather than skills?

Mr. MORRIS. Sir, we saw no evidence in the 13 offices we visited and the 100 folks we talked to that there was political influence in the career employee ranks.

The CHAIRMAN. Are most of these BOS people career employees?

Mr. MORRIS. Yes, sir.

The CHAIRMAN. At what level?

Mr. MORRIS. At grades 9 and above. They go up to grades 11 and 12, and they report to people called Assistant District Directors and Assistant Regional Administrators at higher grades, 13 and so on.

The CHAIRMAN. What skills are required for this job to enter at, say, a GS-10 or 11, somewhere in that range? What skills are required of these people before they can take this job?

Mr. MORRIS. We have regular civil service series job requirements that frankly, sir, are not tailored to this kind of work. This

work is indeed unique, in our experience, in all of Government. We are talking about a collection of management consultants, as I said a little earlier. Let me just suggest to you the workload that we found in one of the districts we visited for a BOS who had 16 firms in his portfolio.

We asked him what he had been doing with those firms in the past few years. He said, I have got, first to advise them on their sales and marketing, not just to Government, but to the commercial world as well. He said, second, I help them do cost estimating for bids in the commercial sector, as well as in Government. He said, third, I suggest ways of reducing their overhead costs. He goes into the firm and looks at how they are structured. He accompanies them to the bank to get a line of credit. He helps develop prices for sales to commercial customers. And he advises on recruiting and training personnel.

You can just imagine the kind of burden that puts on an ordinary person who is not a graduate of a business school or has not had this kind of experience. We think it is an exciting, important, and challenging opportunity to train our people. The training is not going to come from just ordinary conventional courses. We think it is going to come largely from case studies of our own experience, passed from one to another of our BOS personnel.

The CHAIRMAN. In a hearing on this subject last year, we had a successful minority contractor, I believe he was from New York, and he had a janitorial service organization. He had graduated from the program, I believe. At that time, he was one of the finest, most competent people that has ever been before this Committee, and I asked him the specific question about the kind of technical assistance he got while he was in the program.

He said that the SBA sent three, I suppose, three of these business opportunity specialists into his plant, and they stayed, I forget, some period of time, 2 or 3 weeks, and he said that he would not have hired any of the three to sweep floors. So, obviously, if I understood the response to the last question about the skills these people have, many of them may look fairly good on paper, but they do not have the business experience where they can really go in and be of help to these people.

Mr. MORRIS. One of our key recommendations, probably the most important, is that we put into effect what we describe as a "Workforce Effectiveness Program," headed by an assistant to Mr. Gonzalez here at headquarters, with counterparts in each region concentrating on surveying the skill base in each district office.

They would look at the weaknesses that exist, inventory those weaknesses, and then arrange for the kind of training that is going to upgrade their abilities. You have, in other words, sir, a very uneven picture out there today which supervisors themselves acknowledged to us as we made our study.

The CHAIRMAN. You know, you have such a variance of kinds of contractors and the services they are performing. Some of them are manufacturers, some are consultants, some of them perform services. My guess is that most 8(a) contractors are service contractors. Is that a fair statement or not?

Mr. MORRIS. No, sir. We have a breakdown in our report.

The CHAIRMAN. Could you give me that just briefly.

Mr. MORRIS. As of today in manufacturing, there are 451 out of the 3,000 firms. In construction, there are almost 995. In nonprofessional services, such as janitorial, food service, and so on, there are about 517. In professional services, CPAs, consulting firms, people of that type, there are 969. Then there is a very small group of others of 32. So the most populous altogether is construction and the next is professional services. The least in numbers is manufacturing.

But, the dollar picture is quite different. Manufacturing contributes very large numbers of dollars. The average contract we found was about \$1.5 million for a manufacturing contract, whereas for construction, it is under \$500,000, about one-third as much.

The CHAIRMAN. That is really interesting. I am going to review that study because those are fascinating.

Mr. MORRIS. They are fascinating data, sir, and they illustrate the problem, particularly where you give Business Opportunity Specialists a mix of all kinds of businesses. Some of them have a dozen or 15 different kinds of businesses and they cannot be expected to be knowledgeable in all of them. The most successful become specialists—the one that I read to you who had 16 firms in his portfolio had all construction firms. He really had become expert in the construction firm business in his area.

The CHAIRMAN. Mr. Morris, do you have a breakdown of the ethnicity of these 3,000 8(a) contractors?

Mr. MORRIS. Sir, I do not have, in this document here, but these data are all from SBA and they have that data.

The CHAIRMAN. Who has that data?

Mr. MORRIS. Mr. Gonzalez.

The CHAIRMAN. Did you hear Mr. Mitchell's statement this morning that he thinks that from time to time, and especially on military bases, contracts are lumped together to provide different kinds of skills under one contract which have the effect of eliminating minority business opportunities?

Mr. KLINE. Sir, that is the trend. People are moving toward umbrella-type contracts. Mr. Mitchell suggested the reason is one of administration. That is a factor. A second is an interest in greater management control of having things come together in a master contract and supervising it that way. I think this has had an impact along the lines that he was suggesting in terms of the objectives of this program.

The CHAIRMAN. Do you have any suggestions as to how we might address that in this bill? You say it is a problem in the 8(a) Program?

Mr. KLINE. I think it is in relation to the objectives of the program, yes, sir. In terms of having a global solution to be addressed legislatively, without understanding the context of different agencies like NASA and portions of DOD and elsewhere, I think there should be some exploration to make sure that that is fully understood before I would want to offer a solution here.

The CHAIRMAN. Are these business specialists, the BOS, is he expected to monitor the contract during its administration?

Mr. MORRIS. Sir, contract administration is delegated by SBA contract by contract to the buying agencies, so they oversee 8(a) contracts just as they do any contract that they let. On the other

hand, the BOS should be expected to keep in touch with performance under that contract, and if trouble begins to occur, to step in and help resolve the problems.

Mr. KLINE. Sir, categorized under the heading of the naive idealistic response, if this were my outfit to run, the best people in the world to be BOS would be people who had been there, retired businessmen who have seen that entire functional span and have made it work. Rather than going out after the bright-eyed, bushy-tailed lot to come in and help, there could be a feature in the program to get that other kind of talent in, people on a second career or some public obligation that they are filling.

I know that is idealistic. I think Mr. Morris would tell you that certainly the people who are the most impressive among those he interviewed were people with that kind of background. I think they will be perceived to be the most effective in the services that they are providing for the 8(a) firms.

The CHAIRMAN. Mr. Morris, did you make a determination, or do you have any thoughts, about whether or not the 90-day certification provision in here can be met with existing staff?

Mr. MORRIS. Sir, it would not be fair for us to try to draw that conclusion from the data that we collected. We did not home-in on that problem in that depth. The need for streamlining the procedure was very apparent, because today there are some 10 or a dozen different stopping points for an application before it reaches final consideration and acceptance or rejection.

The CHAIRMAN. How does that happen? Why do they have that many stopping points?

Mr. MORRIS. That is the way the organization works. That is, the district level is the beginning point. Several people within the district, including the legal office, would be expected to review and to make final recommendations which are signed off to the region. Then, the region goes through a similar sequence of reviews. Then a signoff by the Regional Administrator to headquarters, where a similar sequence of reviews takes place before the Associate Administrator is presented with the final package. What you are attempting to do, as we understand the bill, is to streamline that process, to cut out some of these levels of review, and to shorten the time.

The CHAIRMAN. You know sometimes, "no" can be a very merciful answer if you have been struggling with something for 1½ years, and been hanging by your thumbs, and your bank is hanging by its thumbs, and there may be potential stockholders. You know, I have people call me all the time and say I am at this level and so far I am okay, but if you would just give them a call to kind of push it on through, and so on.

That seems like an absurdity to have that many stops along the way that people have to pass this little and that little test. I think that the 90-day certification provision is one of the best things in the bill. People need some certainty. If they are not going to be certified, they need to know it. If they are going to, they need to know it so that they can get their ducks in a row. I am very pleased to have your statement fortify that proposition, that that can be improved on greatly.

Finally, I would just say do you have any feel at all, and this is a little outside your line and I am not suggesting you answer if you do not feel comfortable with it, but do you have any feeling about this threshold for competition, whether there ought to be \$1 million or \$2 million or something else, or do you agree with the competition proposal?

Mr. MORRIS. Sir, the one point we fully understand, accept, and support is the need for injecting competition. We were impressed with the almost unanimous viewpoints that we encountered within the SBA and outside as to the necessity of doing it. The questions of how to do it, when to do it, and what thresholds to employ are going to take a lot of study to answer correctly.

Setting out general goals, such as you have done in the bill, may be the best way to get the whole ball rolling. But, it is not a simple, easily accomplished change that you are asking to be made. It must be made! Whether time should allow for testing, modeling, and consideration of alternatives, region by region, is the question that occurs to our minds.

The CHAIRMAN. Well, our thrust in this bill, Mr. Morris and Mr. Kline, of course, is to be fair, but also to improve dramatically. First of all, it is to eliminate the potential for abuse as far as we can possibly eliminate it. My father was a small town businessman and of course he judged almost everybody by whether they paid their bills or not. He used to say that if somebody sets out to beat you, they will get it done. I have learned in Government that it is almost impossible to have a foolproof law that somebody cannot abuse or defeat or circumvent. Certainly, that is one of the primary reasons for this bill.

The second one is to improve dramatically the success of this thing, and particularly of those who graduate. We find in our studies that so many of these graduates are just no longer in business, which means the program is a failure. One of the things that we have put in here about trying to wean them away from Government contracting along the way is to make sure that they are going to be successful.

We ought to maybe give them 3 or 4 years before we require them to start succeeding in the outside world. But, as I say, I want to be eminently fair, but I want to be sure that these people are making progress toward graduation and successful business after graduation. Unless we do that, then this bill will not have achieved its goal. So, I do not see why anybody should object to some competition at some level as long as it is among minority contractors.

We are not saying, you know, put this between an 8(a) contractor and the rest of the world, we are saying among 8(a) contractors. Let them bid. I do not see anything wrong with that. I think that is the one thing that will help our percentages in graduation and make the program much more effective.

You both have been excellent witnesses. We thank you very much for being with us. I am going to read that study. It sounds very interesting. The Committee will recess until further call of the Chair.

[Whereupon, at 12:25 p.m., the Committee recessed subject to the call of the Chair.]



**S. 1993, THE MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987 AND
H.R. 1807, THE CAPITAL OWNERSHIP DEVELOPMENT REFORM ACT OF 1987**

THURSDAY, FEBRUARY 18, 1988

U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SR-428A, Russell Senate Office Building, Hon. Dale Bumpers (Chairman of the Committee) presiding.

**STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM
THE STATE OF ARKANSAS**

The CHAIRMAN. This morning the Committee resumes its hearing on legislation needed to reform the Small Business Administration's Minority Small Business and Capital Ownership Development Program, generally referred to as the 8(a) Program.

The Committee's objective in fashioning this legislation is to refocus the 8(a) Program as a business development program that works, one that graduates firms capable of making a go of it in the competitive marketplace.

Since our first hearing, I personally held lengthy discussions with several 8(a) firms, and the Committee staff has conducted briefings and discussions with several dozen firms. Some have mistakenly suggested that we are shaping punitive legislation, drafted solely in response to the alleged abuses relating to the Wedtech Corporation's participation in the program. This is not the case. Yet, I believe that we can't ignore any lessons to be learned from this case simply because it is an egregious one.

We are fortunate today to have our first witness, Senator Carl Levin, whose reputation for tenacious probing of complex issues is legendary. As Chairman of the Governmental Affairs Subcommittee on Oversight of Government Management, he has conducted a thorough analysis of the Wedtech case. At his invitation and that of Senator Bill Cohen, the Subcommittee's Ranking Member, Senator Weicker and I participated in some of their investigative hearings.

In all too many respects a very dismal picture of the 8(a) Program was presented, including not only Wedtech's own criminality but also a decision-making process at SBA and in the White House which was downright depressing. In fact, many have urged that the

Wedtech case was such an aberration that it provides no valuable guidance to those trying to improve the 8(a) Program.

I'm not certain I agree. Senator Levin's painstaking dissection of the case has once again revealed the effects of an array of systematic weaknesses in the 8(a) Program which have been repeatedly noted in earlier inquiries. The Subcommittee will soon be releasing its report. In the meantime, Senator Levin, an active Member of this Committee, supported by his excellent Governmental Affairs Committee staff, has been assisting us by suggesting improvements to the 8(a) Program legislation which I am determined to report promptly and move to enactment.

This morning you will share some of the findings of his Subcommittee's inquiry and make suggestions for strengthening the 8(a) Program. We will also have the benefit of testimony from the Chairman of the House Small Business Committee, Representative John LaFalce. He too has immersed himself in this very difficult legislative challenge. Under his leadership, H.R. 1807, introduced last March by Representative Mavroules, moved steadily through the House Committee and was unanimously approved by the full House on December 1 of last year. We look forward to his comments.

The Committee will also receive testimony from the General Accounting Office. They will share with the Committee the preliminary findings of a recently completed review of the 8(a) Program being undertaken by Representative Jack Brooks, Chairman of the House Government Operations Committee.

I want to take this opportunity to thank him for his cooperation in releasing this valuable information to this Committee. It may well make the difference. GAO has been updating the findings of its April 1981 report entitled "The SBA 8(a) Procurement Program: A Promise Unfulfilled."

Unfortunately, GAO's testimony reflects that most of the problems identified in 1981 are still with us in 1987. In 1981 the top 50 8(a) firms were being awarded about 31 percent of the total value of all 8(a) contracts. By 1987 the top 50 were being awarded 35 percent. That's an increase of 4 percent. If the program is to be broadly beneficial to its 3,000 participants, this trend must be corrected.

In 1981 the GAO reported that too many 8(a) firms graduated from the program wholly dependent upon sole-source contracts. In 1987 our Committee's survey of 8(a) graduates revealed a similar finding. Both S. 1993 and H.R. 1807 seek to address these and other — fundamental problems.

Next the Committee will hear from a highly successful minority entrepreneur, Mike Gooden, president of the Integrated Systems Analysts, a professional services firm meeting the needs of Government and the commercial sector. In operation only since July 1981, ISA made very effective use of the 8(a) Program to expand its competitive business capabilities. ISA voluntarily left the program prior to its graduation date.

Finally, the Committee will receive testimony from Dr. Robert Saucedo, the chairman of LAMA, the Latin American Manufacturers Association.

Before turning to today's testimony, I want to note that the Committee has scheduled its 3d day of hearings on these bills for

Thursday, February 25, at 2 p.m. During that hearing, which will be Chaired by Senator Kerry, additional testimony will be received from individual 8(a) Program participants, as well as representatives of associations whose members participate in the program. We are striving to obtain the views of a good cross-section of the types of firms participating in the program, including manufacturing, construction, and the fastest growing category, professional service firms.

Senator Levin, welcome this morning. We are anxious to hear you from that side of the table.

STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN, AND CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, COMMITTEE ON GOVERNMENTAL AFFAIRS, U.S. SENATE, ACCOMPANIED BY PETER LEVINE, SUBCOMMITTEE COUNSEL

Senator LEVIN. Mr. Chairman, thank you for the invitation. I am accompanied today by Peter Levine who is the counsel to my Subcommittee staff. We are grateful for your very generous comments about the work of our Subcommittee. And we are also grateful to you and Senator Weicker and the staff of this Subcommittee for the deep involvement that you have had in our Governmental Affairs Subcommittee work in the Wedtech hearings. The cooperation has been very great and the involvement very deep, and we are most appreciative for it.

We are delighted that you and Senator Weicker are taking the lead in both preserving and reforming the 8(a) Program. Both of those are necessary. We need an 8(a) Program, and we need an 8(a) Program to be reformed. That program gives important business opportunities to members of our society who have been denied such opportunities for too long. It also can give disadvantaged individuals a chance to own their own businesses and to bring needed jobs and training to their communities.

Unfortunately, as you've indicated, the 8(a) Program has some problems too. And as you have indicated, our Subcommittee has been looking into the procurement abuses in the Wedtech situation. Because that Wedtech affair has involved 8(a) contracts, the investigation has also included a review of certain aspects of the 8(a) Program.

The investigation which we have conducted found that the owners of Wedtech, the so-called disadvantaged owners of Wedtech, sold a majority of their company to nondisadvantaged individuals. They became millionaires in the process. They were still able to use their connections to remain in the program and to obtain lucrative Federal contracts on a sole-source basis. And in virtually every instance where the 8(a) Program gave the SBA discretion, SBA officials appeared to have abused that discretion to give Wedtech preferential treatment.

The 8(a) Program is intended for businesses that are at least 51 percent owned by socially and economically disadvantaged individuals. However, the eligibility standards are loose and termination procedures are cumbersome. That program offers sole-source contracts. It offers business development grants. It offers advanced

payment loans. But there are no objective standards as to how these benefits are to be distributed among participants. The result is that some companies remain in that program for years and never receive a single contract while others, like Wedtech, cash in on large contracts and grants without ever building a business base that can survive without Federal support.

Numerous Wedtech officials and consultants have been charged with crimes ranging from bribery and kickbacks to defrauding the Government. Several of these have already been convicted.

Wedtech's illegal activities do not tell the entire story. Over the period of 4 years, SBA officials who have not been charged with any wrongdoing reached repeated, indefensible decisions that favored Wedtech. These officials engaged in sloppy decisionmaking, overlooked obvious facts, and in one important matter, acted with unconscionable haste to reach the conclusion that the company sought. These abuses were made possible not only by Wedtech's illegal activities, but also by a loosely structured program that invites favoritism.

Now, it is very important to note, as the Chairman has, that the vast majority of 8(a) companies are not favored, do not receive handouts, and do not do anything improper. Indeed, the vast majority work very hard for their contracts and on their contracts. Many of these companies are struggling to succeed and would not remain viable without the assistance provided by the program. Some have used the program in a responsible way to build balanced, diversified businesses. In my home State of Michigan, for instance, a number of disadvantaged businesspersons have successfully built on the assistance provided by the program to bring their companies into the mainstream of our economy.

The success of these companies is a credit to the individuals who run them and an important reason why we must reform the 8(a) Program and not abandon it. However, the fact that many 8(a) companies—indeed, most 8(a) companies—use the program in a responsible way cannot serve as a rationale for preserving features of the program that have been abused by less responsible companies. And our objective must be to reform the features of the program that invite abuse and favoritism while preserving the program for individuals and businesses who use it responsibly.

The Wedtech case, Mr. Chairman, demonstrates dramatically the need for reform in two areas to begin with, business development and eligibility.

With regard to business development, the SBA selected Wedtech to receive two huge 8(a) contracts, each five times larger than the biggest contract handled by the company before, on a sole-source basis and without any documentation. The company experienced extraordinary management and cash flow difficulties in absorbing the new business. In 1986, after 11 years in the program and some \$250 million of 8(a) contracts, Wedtech was viewed by SBA officials in Washington and New York as a success story even though it had developed no independent business base, but remained dependent on the 8(a) Program for 95 percent of its contracts. Now, that again I repeat is after 11 years in the program and after \$250 million of 8(a) contracts.

This kind of problem can be avoided in the future by introducing competition into the program and by requiring the participating companies to achieve a balance of 8(a) and other business. Your bill, the bill before this Committee, contains provisions which will do exactly that. The bill would require all contracts over \$2 million in value to be competitively awarded and all participants to gradually reduce their dependence on 8(a) contracts after their 4th year in the program.

Now, there is another area in which the 8(a) Program needs improvement, and that's eligibility. The SBA permitted Wedtech to remain in the program in 1984 and to receive the huge Navy pontoon contract despite the fact that the company had gone public thereby giving up minority ownership and making its supposedly disadvantaged owners millionaires. Over the next 2 years, Wedtech completed two more public stock offerings, spun off several divisions and absorbed two other companies. Its owners sold millions of dollars of company stock, bought expensive cars and homes, and yet were still considered economically disadvantaged by the SBA. To this day SBA's rules and regulations implementing the 8(a) Program do not preclude this from happening again.

The important public purpose of the 8(a) Program, which you have identified, defended and proclaimed, is undermined when individuals who are not socially and economically disadvantaged are permitted to participate. Such participation by nondisadvantaged individuals reduces the amount of benefits available to those who are disadvantaged. It diverts the energy and efforts of the SBA, and it undermines support for the program. For this reason it is vital that 8(a) participation be strictly limited to companies owned by disadvantaged individuals.

Now, this means that ownership for 8(a) purposes must be unconditional, to exclude companies which, like Wedtech, are only nominally owned by disadvantaged individuals. And accordingly, I believe that 8(a) eligibility requirements should be rewritten to clarify that ownership means absolute ownership, not ownership subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, shareholder agreements, and other similar arrangements.

I understand the SBA is working to clarify its regulations and policies on ownership to prevent a recurrence like the Wedtech case. And I believe that this Committee, Mr. Chairman, should monitor the SBA's efforts in this area, not draft new legislation now, but monitor SBA's efforts in this area to determine whether the new regulations and policies are adequate to resolve the ownership issue.

Now, in addition, SBA must apply objective standards with teeth in them to ensure that only economically disadvantaged individuals are permitted to receive program benefits. The success of 8(a) companies is a primary objective of the program. I believe it would be counterproductive to kick firms out of the program simply because they become profitable or acquire assets at a particular point in time. However, it is unacceptable that Federal aid intended for the disadvantaged can be used to line the pockets of millionaire owners.

The bill in front of the Committee does not now address this issue. And it is a complicated issue. And I understand that the SBA is not planning to address this issue either. But I do hope to offer an amendment to the bill to clarify that individuals who take advantage of program benefits to achieve excessive personal wealth—and I emphasize personal wealth here, not the profitability of their corporation or company, but that individuals who take advantage of program benefits to achieve excessive personal wealth will not be permitted to continue in the program. And I do hope to work with you and other Members of the Committee, Mr. Chairman, in drafting this amendment for your consideration.

In short, we have a needed program, an important program, a useful program, whose purpose I believe is significant. It has worked in most cases. Where it has not, it should be reformed in order to preserve it. If we don't preserve it, we're going to lose it. If we don't reform it, we're going to destroy it. It must have the credibility of the general public who believe that people who have been economically disadvantaged should have an opportunity to overcome that disadvantage. They don't believe, however, that it should be used to line the pockets of other people, and they believe that it should be used for the people intended and for nobody else.

Again, Mr. Chairman, I commend you, Senator Weicker, other members of this Committee, for your extraordinarily important work in a very complex area. There is always the risk of being misunderstood when one engages in this kind of work. But again, the purpose here is to preserve an important program and to preserve its important purpose.

[The prepared statement of Senator Levin follows:]

STATEMENT OF SENATOR CARL LEVIN
BEFORE THE SENATE SMALL BUSINESS COMMITTEE
FEBRUARY 18, 1988

I greatly appreciate this opportunity to testify before the Small Business Committee. I am pleased that the Chairman and Ranking Minority member of the Committee are strongly pursuing reform of the federal 8(a) program, and I commend them for their efforts.

The 8(a) program is an important federal initiative designed to promote viable, minority-owned businesses and to bring disadvantaged individuals into the mainstream of our economy by giving them an opportunity to participate in the federal acquisition process. When it works right, the 8(a) program provides important business opportunities to members of our society who have long been denied such opportunity. It can give disadvantaged individuals a chance to own their own businesses and to bring needed jobs and training to their communities.

Unfortunately, the 8(a) program is not without sizeable problems. For the past year, the Subcommittee on Oversight of Government Management of the Senate Governmental Affairs

Committee has been looking into procurement abuses by the Wedtech Corporation, and since Wedtech's federal contracts were obtained through the 8(a) program, that investigation has also included a review of certain aspects of that program. The investigation which we conducted found that Wedtech's disadvantaged owners sold a majority of their company to non-disadvantaged individuals, became millionaires, and were still able to use their connections to remain in the program and receive lucrative federal contracts on a sole-source basis. In virtually every instance where Section 8(a) gave the SBA discretion, SBA officials appear to have abused that discretion to give Wedtech preferential treatment.

Over a period of five years, from 1981 to 1986, Wedtech hired well-connected consultants and developed relationships with senior federal officials for the purpose of affecting federal procurement decisions to Wedtech's benefit. In all too many cases, Wedtech's approach to the 8(a) program succeeded. In 1982, after the personal intervention of former Presidential Advisor Lyn Nofziger, Presidential Counsellor Ed Meese and his assistant, Jim Jenkins, Wedtech received a sole source, \$24 million 8(a) contract to build engines for the Army. In addition, the company was awarded \$5 million of SBA assistance -- which SBA officials testified would not have been made available, but for the intervention of the White House.

A year later, the SBA permitted Wedtech to remain in the 8(a) program at a time when the company was clearly ineligible. The SBA's determination that Wedtech remained eligible for the 8(a) program in 1983 and 1984 was made despite the fact that (1) the designated disadvantaged owner, John Mariotta, no longer owned 51% of the company's stock (as required by law and regulation), and (2) Mr. Mariotta was no longer economically disadvantaged, but in fact was a multi-millionaire. The SBA accepted Mr. Mariotta's claim of ownership on the basis of a sham "stock purchase agreement", despite the fact that the agreement did not require the delivery of any stock to Mr. Mariotta, no money changed hands, no payments for the stock were due for two years, and the only penalty for a failure to make a payment was return of the stock. One SBA official testified that he was pressured to reach a quick decision on the transaction so that a large contract could be awarded to Wedtech.

Finally, in 1984, with the assistance of Mr. Nofziger and his partner, Mark Bragg, the company was awarded a \$134 million Navy contract to build pontoon causeways -- the largest single 8(a) contract ever awarded -- despite the opposition of the uniformed Navy. Throughout 1983, the SBA led numerous 8(a) companies to believe that they would get a part of the project. The SBA then rejected these other companies and awarded the entire contract to Wedtech without

any written documentation justifying the decision. Wedtech had never worked on a shipbuilding contract before, had never done any similar assembly work, and did not even have any facilities in place for the construction of the pontoons. In fact, Wedtech was designated as the SBA's candidate for the pontoon contract on the very same day that the SBA found the company eligible for continued participation in the 8(a) program despite its obvious failure to meet minority ownership and economic disadvantage requirements.

Numerous former Wedtech officials and consultants have been charged with crimes ranging from bribery and kickbacks to defrauding the government. Several of these individuals have already been convicted or pled guilty. Wedtech's illegal activities do not tell the entire story, however. Over a period of at least four years, SBA officials who have not been charged with any wrongdoing reached repeated, indefensible decisions that favored Wedtech. These officials engaged in sloppy decision-making, overlooked obvious facts, and in one important matter acted with unconscionable haste to reach the result that the company sought. These abuses were made possible not only by Wedtech's illegal activities, but also by a loosely structured program that virtually invites favoritism.

The 8(a) program is intended for businesses that are at least 51% owned by socially and economically disadvantaged

individuals. However, the SBA's eligibility standards are so loose, and termination procedures so cumbersome, that no company has ever been thrown out of the program for cause after a hearing. The 8(a) program offers sole-source contracts, business development grants, and advance payment loans, but the SBA has no objective standards as to how these benefits are to be distributed among participants. The result is that some companies remain in the program for years and never receive a single contract, while others -- like Wedtech -- cash in on large contracts and grants without ever building a business that can survive without federal support.

The Wedtech case may be the best-known abuse of the 8(a) program, but it is certainly not the only case. Over the years, there have been other instances in which favored contractors have stayed in the program too long and received too many contracts without developing viable businesses. The SBA itself may have aggravated this tendency over the years by failing to provide minority businesses with a balance of contractual and other support.

Of course, the vast majority of 8(a) companies are not favored, do not receive hand-outs, and do have to work hard for their contracts. Many of these companies are struggling to succeed and would not remain viable without the assistance provided by the program. Some have used the program in a

responsible way to build balanced, diversified businesses. In my home state of Michigan, for example, a number of disadvantaged businesspersons have successfully built on the assistance provided by the program to bring their companies into the main stream of our economy.

The success of these companies is a credit to the individuals who run them and an important reason why we must reform the 8(a) program and not abandon it. However, the fact that many 8(a) companies use the program in a responsible way cannot serve as a rationale for preserving features of the program that have been abused by less responsible companies like Wedtech. Our objective must be to eliminate the features of the program that invite abuse and favoritism, while preserving the program for individuals and businesses who use it responsibly.

The Wedtech case dramatically demonstrates the need for reform in two key areas of the program -- business development and eligibility.

First, with regard to business development, the SBA selected Wedtech to receive two huge 8(a) contracts -- each five times larger than the biggest contract handled by the company before -- on a sole-source basis and without any documentation of the rationale for the selection. The company experienced extraordinary management and cash flow

difficulties in absorbing this new business. In 1986, after 11 years in the program and some \$250 million of 8(a) contracts, Wedtech was viewed by SBA officials in Washington and New York as a success story, but had developed no independent business base remained dependent on the 8(a) program for 95% of its contracts.

This kind of problem could be avoided in the future by introducing competition into the program and by requiring that participating companies achieve a balance of 8(a) and other business. The bill before the Committee contains provisions that would do exactly this, requiring that all contracts over \$2 million in value be competitively awarded and that all participants gradually reduce their dependence on 8(a) contracts after their fourth year in the program. These measures should not have any adverse impact on the responsible companies in the program, which already have, or are developing a balanced business base and which are likely to reach the \$2 million threshold for competition only after building a strong business base through smaller contracts. Mr. Chairman, Senator Weicker, I commend you for your efforts in advocating these much-needed changes to the 8(a) program.

The second area in which the 8(a) program needs improvement is eligibility. The SBA permitted Wedtech to remain in the program in 1984 and to receive the huge Navy pontoon contract despite the fact that the company had gone

public, thereby giving up minority ownership and making its supposedly "disadvantaged" owners millionaires. Over the next two years, Wedtech completed two more public stock offerings, spun off several divisions, and absorbed two other companies. Its owners sold millions of dollars of company stock, bought expensive cars and homes -- yet were still considered "economically disadvantaged" by the SBA. To this day, the SBA's rules and regulations implementing the 8(a) program do not preclude this from happening again.

The important public purpose of the 8(a) program is severely undermined when individuals who are not socially and economically disadvantaged are permitted to participate. Such participation by non-disadvantaged individuals reduces the amount of benefits available to those who are disadvantaged, diverts the energy and efforts of the SBA, and undermines support for the program. For this reason, it is vital that 8(a) participation be strictly limited to companies owned by disadvantaged individuals.

This means that "ownership" for 8(a) purposes must be unconditional to exclude companies which, like Wedtech, are only nominally "owned" by disadvantaged individuals. Accordingly, I believe that 8(a) eligibility requirements should be rewritten to clarify that "ownership" means absolute ownership that is not subject to conditions precedent, conditions subsequent, executory agreements,

voting trusts, shareholder agreements, or other similar arrangements. I understand that the SBA is working to clarify its regulations and policies on ownership issue to prevent a recurrence of the Wedtech case. We should closely monitor the SBA's efforts in this area to determine whether the new regulations and policies are adequate to resolve the ownership issue without the need for legislation.

In addition, the SBA must apply objective standards, with teeth in them, to ensure only economically disadvantaged individuals are permitted to receive program benefits. The success of 8(a) companies is a primary objective of the program, and it would be counterproductive to kick firms out of the program simply because they become profitable or acquire assets at a particular point at time. However, it is unacceptable that federal aid intended for the disadvantaged can be used, as it was by Wedtech, to line the pockets of millionaire owners. The bill now before the Committee does not address this issue, and I understand that the SBA does not plan to address it either. For this reason, I hope to offer an amendment to the bill, to clarify that individuals who take advantage of program benefits to achieve excessive personal wealth will not be permitted to continue in the program. I hope to work with the my fellow members of the Committee to ensure that this important program reform is implemented.

In short, the 8(a) program is a needed program, but it is also a program ripe for reform. I strongly commend Senators Bumpers and Weicker for taking the lead in this effort, and for the bill that they have introduced. S. 1993 takes important steps in the right direction. These measures further the bill's important purpose of requiring SBA officials and 8(a) participants to place a greater emphasis on balanced business development and the creation of viable, competitive companies.

Section 8(a) is a program with an important public purpose and many notable successes. However, it is also a program that has been subject to repeated abuses and scandals that threaten to overwhelm its successes. The time has come to reform the program. S. 1993 is a good bill, and I hope that through the course of these hearings we can give it the needed momentum for passage.

The CHAIRMAN. Senator Levin, thank you very much. I couldn't agree with you more. And all of the people who have taken exception to this bill or particular provisions of it, I have made the point time and time again that this is one place where the public is involved. They either want this program strengthened to work as it is supposed to, or they want to torpedo the program.

I don't want to lose the program. I think it has tremendous merit, and it has benefited a lot of people, and it can benefit a lot of other people. We ought not lose sight of that simply because of two or three scandals. We do have to reform the program, that's without question.

I'll come back with a couple of questions in just a minute, Senator Levin, but we've been joined by other colleagues. Do any of you have statements you would like to put in the record or to recite at this point?

Senator DIXON. I'll put my statement in the record, Mr. Chairman.

The CHAIRMAN. It will be admitted without objection.

[The prepared statement of Senator Dixon follows:]

FEBRUARY 18, 1988

STATEMENT BY SENATOR ALAN J. DIXON

COMMITTEE ON SMALL BUSINESS
HEARING ON MINORITY BUSINESS
DEVELOPMENT PROGRAM REFORM ACT
OF 1987

S. 1993

THANK YOU, MR. CHAIRMAN.

AGAIN THE LEADERSHIP OF THIS COMMITTEE HAS PUT TOGETHER AN EXCELLENT GROUP OF WITNESSES TO TESTIFY BEFORE US THIS MORNING. WE ARE PRIVILEGED TO HAVE OUR DISTINGUISHED COLLEAGUE SENATOR LEVIN SHARE WITH US HIS PERSONAL VIEWS OF REFORM OF THE 8(A) PROGRAM. THE PROBE CONDUCTED BY SENATOR LEVIN INTO THE WEDTECH SCANDAL SHOWED VERY CLEARLY THAT THE 8(A) PROGRAM IS SUBJECT TO POLITICAL BIAS AND UNFAIR PRESSURE. THE WEDTECH STORY IS REplete WITH EXAMPLES OF INFLUENCE PEDDLING, ATTEMPTED BRIBES, AND PRESSURE ON STAFF TO AWARD AN IMPORTANT CONTRACT TO A COMPANY WITH LITTLE APPARENT QUALIFICATIONS. IF SIGNIFICANT CONTRACTS WERE SUBJECT TO COMPETITION -- LIKE I SUCCESSFULLY INTRODUCED INTO THE NAVY'S 8(A) SEASHED PROJEST -- WE MIGHT HAVE AVOIDED THIS SORDID EPISODE. UNFORTUNATELY, THE RAMIFICATIONS OF WEDTECH EXTEND BEYOND THE SCOPE OF ONE DEFENSE CONTRACT. NOT ONLY DID OFFICIALS OF WEDTECH CIRCUMVENT CONTROLS INTENDED TO PROTECT AND ENHANCE MINORITY SMALL BUSINESSES, BUT THEIR ACTIONS TAINTED THE OVERALL IMAGE OF THIS IMPORTANT PROGRAM. WE NEED TO BE SURE THAT SUFFICIENT REFORMS ARE MADE TO NOT ONLY PREVENT SUCH ABUSES IN THE FUTURE, BUT TO ALSO CORRECT ANY NEGATIVE IMPRESSIONS THAT PERSONS NOT AFFILIATED WITH THE PROGRAM MAY HAVE ACQUIRED DUE TO WEDTECH. NO COMPANY CAN AFFORD TO COMPETE FOR BUSINESS WITH A STIGMA ATTACHED TO IT, MUCH LESS A COMPANY ALREADY SOCIALLY AND ECONOMICALLY DISADVANTAGED.

IN ADDITION TO SENATOR LEVIN WE ARE ALSO PRIVILEGED TO HAVE REPRESENTATIVE LAFALCE OF THE HOUSE SMALL BUSINESS COMMITTEE HERE TO EXPLAIN KEY POINTS OF H.R. 1807. IT IS ALWAYS NICE TO HEAR DIRECTLY THE REASONS UNDERLYING DIFFERENT PROVISIONS IN A COMPANION PIECE OF LEGISLATION. I THANK MR. LAFALCE FOR TAKING THE TIME TO BE WITH US TODAY.

THE 1981 GAO STUDY OF THE MINORITY SMALL BUSINESS PROGRAM, THE SBA 8(A) PROCUREMENT PROGRAM -- A PROMISE UNFULFILLED, SHOWED US THEN THAT REFORM WAS NEEDED. I EXPECT THE RESULTS OF THAT STUDY'S UPDATE WILL AGAIN SHOW THAT WE HAVE FAILED TO PROVIDE THE NECESSARY BUSINESS DEVELOPMENT TOOLS TO SMALL DISADVANTAGED COMPANIES. THE QUANTITATIVE RESULTS PROVIDED BY MR. LUKE WILL UNDOUBTEDLY BE CORROBORATED BY SPECIFIC EXAMPLES GIVEN BY OUR PANEL WITNESSES.

I HOPE THAT TODAY'S TESTIMONY WILL GIVE US A CLEARER UNDERSTANDING OF THE SPECIFIC CHANGES WE MUST MAKE TO THIS IMPORTANT ECONOMIC PROGRAM.

**STATEMENT OF HON. JOHN F. KERRY, A U.S. SENATOR FROM THE
STATE OF MASSACHUSETTS**

Senator KERRY. I don't have a statement, Mr. Chairman. I want to thank Senator Levin for his incredible work and really remarkable commitment to continuing on this Wedtech thing because it was not easy to get at it as he has. And his persistence has done us all a tremendous service. And I think he deserves a lot of credit.

Senator LEVIN. Thank you.

The CHAIRMAN. Senator Bond.

**STATEMENT OF HON. CHRISTOPHER BOND, A U.S. SENATOR
FROM THE STATE OF MISSOURI**

Senator BOND. I join with you gentlemen in commending Senator Levin for getting to the bottom of a very difficult problem.

There are, unfortunately, far too many stories around about abuses similar to Wedtech. And I think you put your finger on the real problem, which is making sure that the companies that are benefiting are not, in fact, front companies. The rumors abound about the number of companies that have been set up with nominal owners to take advantage of the 8(a) Program, and it really has brought the whole program into disrepute. There is no question that the program serves a very important social and economic goal.

However, I have found in my own State of Missouri, while there are some very fine companies that have been benefited by the program, there is also a perception that too often the benefits are being siphoned off through sham corporations, front owners, and so forth, to people who don't really need the benefits. And the possibility of participation by other individuals in the profitability of these programs raises the prospect and enhances the opportunity for improper influence. And I think the very thorough work that you have done on investigating this particular situation may give us the guidelines we need to make sure that the program operates properly.

And I would agree with the Chairman that it's a very real question whether we can reform the program sufficiently to keep it because of the widespread perception that it is not only Wedtech, but there are a number of other instances where taxpayers' dollars are being wasted for the benefit of people who were not intended to gain from the program.

Thank you, Mr. Chairman.

Senator LEVIN. If I could add one comment, I thank you for your comments, and the others. I do commend you, Mr. Chairman, on the way you have structured this hearing not only to get to the problems with 8(a), but to get to the successes of 8(a). I think that is very important. Your point about preserving this program because it is important and the best way to preserve it being to make the needed reforms I think is critical. And the witnesses that you are calling I notice later in many cases are going to be witnesses that will demonstrate again why this program is too important to lose. And that means it is too important not to reform.

The CHAIRMAN. Senator Levin, as I listen to your testimony, it makes me wonder who is more culpable in the Wedtech case, SBA

or Wedtech. The truth of the matter is that scandal should never have happened except for the permissiveness of SBA.

This bill is designed as much to nail down some of the discretion that SBA has abused in the past as it is to perform the conduct of a contract.

Yesterday I had a case brought to my attention. It was not an 8(a) case, but it was a small business set-aside in GSA where a person who qualified as a small business entrepreneur got a small business set-aside contract, turned around and sold the contract or the company or both to a company who would have been disqualified from bidding on a small business set-aside program. And SBA, as far as I know, is going to allow that to happen. Now, that sort of thing is just intolerable to me.

But, in any event, let me just ask you a couple of questions, Carl, if I may. One, we are getting some flack from 8(a) contractors about the competition requirements in this bill. You have stated in your statement that you agree wholeheartedly with that. Some of the objections are that they don't object to competition, but they think the threshold ought to be higher. As you know, ours is \$2 million on certain contracts and \$1 million on everything else. I personally thought that that was one of the best aspects of the bill. But we are catching some flack about that.

How do you feel about that?

Senator LEVIN. Mr. Chairman, I think the best way to approach that would be to take a look at the DOD experience. I think it has worked well. They have competition in their set-asides. It's a larger percentage, by the way. DOD has got a 5 percent goal, which is larger than the average in the agencies across the Government, which I think is 3 percent at the moment. It may be too recent a program to get an experience on it, but I think there is some experience we could look at to see how the competition has actually worked in the DOD Set-Aside Program. And that would be a good guidepost for us.

The CHAIRMAN. Did you know that SBA is now trying to administratively lower the level of qualified applicants as far as their personal wealth is concerned? As you know, it is now, I think, \$750,000. They are wanting to lower it. That is just for the benefit of the record. You are not entitled to be a socially and economically 8(a) contractor if your personal net worth is above \$750,000. And you alluded to that in your statement. SBA, as I understand it, is trying to administratively change that under their own rules to \$250,000.

As I understood it, you have an amendment to offer to this bill dealing with that. Is that correct?

Senator LEVIN. It will not address the threshold question.

The CHAIRMAN. Do you have any feelings about this administrative change they're proposing?

Senator LEVIN. Yes. I think basically they're moving in the right direction on it. We have got to make sure, though, that they do not include the stock that one owns in the company that is, in effect, bidding on the 8(a) contracts because it would have a very counterproductive effect. We don't want to punish success that way. We want people not to personally benefit by cashing out and then, in effect, becoming millionaires. If they plow their money back into

their company, I don't think that we ought to in any way punish that. So, we would exclude the value of the stock that people have in their own company that is the company bidding on the 8(a) contracts. We think that's very important that we do that.

SBA deals only with program entry. It looks at that \$750,000 threshold or that lowered threshold, if indeed they are going to lower it—and by the way, that's a presumptive threshold we believe, not an absolute figure. But they look at that only at the time you enter the program.

What we are trying to do is look at an amendment, and the nature of our amendment would be to try to make sure that people don't stay in the program after they are no longer economically disadvantaged. It's a very complicated thing to do in a fair way which, again, doesn't punish you for success. We want to encourage people to plow back the success into the companies, as I've indicated. So, we would exclude the plow-back. But we are trying to design something which would make sure that the intention of the program not only is carried out at the time the people enter into the program, but that it carries out the flavor of that throughout the participation term.

Remember, this is an 8 year term now. People are going to be in this for 8 years. If after 4 years, the people who own a company, excluding the value of their stock, are no longer economically disadvantaged, maybe they shouldn't be getting additional contracts. And we are trying to figure out if there can't be a fair mechanism to take a look at that economic disadvantage status during the program and not just at the moment of entry.

The CHAIRMAN. That is one of the knottiest parts of this bill, and during markup we'll have, I'm sure, a healthy debate on that, and we will probably change the bill in some way, particularly regarding the mix that we're requiring of outside contracts with 8(a) contracts.

Senator Bond.

Senator BOND. I was just going to ask how you would handle the personal wealth situation, and you partly answered it saying that maybe no further contracts would be awarded if personal wealth got to a certain level. If a minority business owner sold out and became a millionaire during the course of the contract, would you have a provision that he would have to forfeit some of the gains of that contract?

Senator LEVIN. Oh, no, no.

Senator BOND. So long as the minority business owner becomes a millionaire off of that contract, you would not have any problems with that, but you would just say that the firm would have no further—

Senator LEVIN. If he or she is no longer economically disadvantaged—after 4 years if the owners are no longer economically disadvantaged, then they probably shouldn't get any more contracts. We would not in any way take away what they've earned. That would be wrong to do that.

Just as they couldn't have gotten eligible to begin with if they were above the \$750,000, if their personal value averages that after 4 years, excluding the value of their stock—I want to emphasize that because you want to encourage people to increase the value of

their company and plow it back. So, excluding the value of the stock in the company, if they are no longer eligible after 4 years, maybe we ought to say so.

We don't do it now. What we say now is once you're eligible, you're always eligible throughout the whole 8 year period. And what we are saying is you probably ought to take a look a third of the way through the 8 year term, perhaps halfway through the 8 year term, to make sure that the spirit of eligibility remains in terms of personal wealth. If it doesn't, then we ought to say let's use this contract for other people because there is a long line of people who are waiting for benefits under this program rather than to continue to have the benefits of this program for people who are no longer, in effect, eligible under the terms that they became eligible.

Senator BOND. What would you do to enforce that? Do you have audited financial statements submitted every year with some criminal penalties? That gets to be sticky.

Senator LEVIN. It's complicated.

Well, we do it now. That's the only thing I can start with. We do it now at the beginning. We have an audit procedure, a determination of eligibility procedure now at the beginning, and why not repeat that, in effect, at some point during the 8 year period or at some points during the 8 year period? In other words, it's not a new procedure we're talking about. It's just applying the same procedure perhaps halfway through the eligibility period to make sure the eligibility remains. That's about as far as we've gotten so far.

And it is complicated because you don't want to penalize people for success. You want to make sure though that they plow that success back into the company. And if they become personally wealthy, fine. There is nothing wrong with personal wealth, but then you should probably not be eligible for a program that is designed to help economically disadvantaged people. You are no longer economically disadvantaged. That program should not be used to benefit you further.

That's what we're trying to get at, but we're not designing a whole new certification. We just would be reapplying the certification that was used at the admission stage during the process of the eligibility 8 year period.

Senator BOND. Perhaps you could establish some standards which would be known to the owners that they are responsible for advising the SBA in any given year when their wealth exceeds some amount.

Senator LEVIN. Whatever that threshold was.

Senator BOND. Yes.

We have to file ethics disclosure every year. I suppose that you could make a provision that they would have to certify when they no longer became eligible. And subsequently if it were found that they had not advised the SBA they had passed that threshold, then there would be some right to recoup profits from 8(a) contracts past that point.

Senator LEVIN. That is one approach we're using. We're trying to keep it simple in terms of administratively.

Senator BOND. And certainly nothing I've described is simple.

Senator LEVIN. No, no. That is actually a relatively simple way of doing it. It doesn't sound so.

Senator BOND. I hope you can find a simpler way.

Senator LEVIN. I'm not sure we can find it simpler than that. I think you may have put your finger on the simplest one. It may not be the one with the most teeth, but it has at least got relative simplicity on its side.

Senator BOND. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Bond.

Senator Kerry.

Senator KERRY. I have just one quick question.

On the business development side, do you think the 150 percent restriction is perhaps too rigid? Would you recommend any flexibility in that?

Senator LEVIN. My understanding checking with Peter Levine, who is counsel to the Subcommittee, is that there is a waiver provision on that. And before I could conclude that it has been applied too restrictively, I would like to see just how generously that waiver provision has been used. It is restrictive, but is the waiver used properly, frequently to handle cases where it is excessively restrictive or not?

Senator KERRY. Would it be, yes.

Senator LEVIN. Would it, yes, because it is a new proposal, so we would have to try to look at the waiver provision to see whether or not it's flexible.

Senator KERRY. So, in essence, you do believe that we've got to be sensitive to the possibility.

Senator LEVIN. Again, with Peter Levine's help, I think we need some kind of a restriction. And I'm not personally familiar with the waiver language. But I would like to review that waiver language to see whether or not it is flexible enough to avoid excessive rigidity in the proposal.

Senator KERRY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Weicker.

STATEMENT OF HON. LOWELL WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator WEICKER. I have no questions except by way of comment to commend Senator Levin for an outstanding job in terms of the investigations of his Subcommittee while at the same time continuing to press for not the elimination of the program, but the improvement of the program. And I think it was an extraordinarily responsible job that you did, Senator. And I think we are all in your debt for it.

Senator LEVIN. Thank you, Senator Weicker and the Chairman and the other Members of the Committee for your generous comment.

The CHAIRMAN. Thank you for your excellent testimony and enlightenment in answering these questions. Thank you.

Chairman LaFalce of the House Small Business Committee has joined us now. Welcome, Mr. Chairman. We are honored to have you over here in the upper house.

[Laughter.]

Representative LAFALCE. It seems lower over here.

The CHAIRMAN. I say that just so you'll remember your status around here.

[Laughter.]

Representative LAFALCE. I'm reminded of it every day.

Senator WEICKER. When I left the House of Representatives to come over here, I was reminded by my colleagues over here I was coming to the lower house. So, you ought to know what the opinions are on the other side of the Hill. I don't think they are shared with you at this stage of the game.

The CHAIRMAN. Well, in any event, we are honored to have you, Mr. Chairman, and anxious to hear your testimony.

STATEMENT OF HON. JOHN J. LaFALCE, A U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK, AND CHAIRMAN, HOUSE COMMITTEE ON SMALL BUSINESS, U.S. HOUSE OF REPRESENTATIVES

Representative LAFALCE. Upper or lower, I'm glad to have the opportunity to testify here today, Mr. Chairman, Mr. Ranking Minority Member.

I am pleased to provide my views on S. 1993, the companion bill to H.R. 1807 that passed the House of Representatives on December 1, 1987. The support for the bills and the similarities between them reflect a bipartisan spirit shared by both Houses of the Congress that I am sure will lead to positive and effective reform legislation.

Before I give my specific comments, however, on the Senate version, I would like to share a few general thoughts and observations. I have been calling for reform of the 8(a) Program for a long time. Toward the end of the 1970s and into 1980 when I was Chairman of a Small Business Subcommittee, before I became Chairman of a Banking Subcommittee, I looked into the program. I wrote SBA. I gave speeches on the Floor of the House in great, great detail calling for specific reforms. In all candor, we have embodied those reforms in H.R. 1807, which passed December 1, 1987, and most of them are included in your S. 1993. I hope that my perspective as shaped by the experiences that I've had will be of value to your Committee.

First of all, let me try to clarify some confusion about what the 8(a) Program is all about. This is the most important point I am going to make. There are misperceptions about this program, about its purposes. It is imperative that we maintain our focus on the central goal of the 8(a) program, and that is business development.

Throughout the history of the 8(a) Program, the goal of business development has been subjugated by special interests, by improper influence, and by a range of shifting political agendas spanning every Administration, Democrat and Republican, since 1968. In order to save this program, it is necessary first and foremost to reaffirm its purposes in order to clearly stake out the public interest considerations that support our efforts.

The 8(a) Program is not intended to benefit a limited number of individuals who wish to aggrandize personal wealth. Neither is the

program primarily intended to multiply at a random rate the share of the Federal procurement budget spent with minority firms. It is imperative that we understand and articulate that. Ensuring that minority firms attain a fair share of Federal procurement is a worthy goal and one which the 8(a) Program may help make a reality, but it is not a direct purpose of the 8(a) Program. It has been misinterpreted and it has been misapplied.

The goal of the 8(a) Program is to redress the effects of past economic discrimination by assisting firms owned and controlled by socially and economically disadvantaged individuals become competitively viable. Its measure of success must not be the number of contracts or the dollar amount of the contracts. Its measure of success must be the number of competitive, ongoing small business concerns that exit the program each year. The reform legislation that emerges from the Congress must firmly shut the door on those who would have used the program in order to advance their own personal gain at the expense of the disadvantaged business community.

Second, I believe there is some misunderstanding and tension surrounding efforts to reform the 8(a) Program that we must address. It is understandable that many firms are anxious about the reform process. This is the first major reform of the program in a decade, and it represents a significant departure from the present statutory framework. It is long overdue.

I would like, however, to assure everyone that this is not a knee-jerk reaction to the Wedtech scandal or any other possible scandal. Efforts to reform the 8(a) Program have been carefully thought out. It has been an exhaustive process extending for a long time, and all views have been solicited and considered.

It must be recognized though that there are many different, and sometimes mutually exclusive, interests among disadvantaged businesses that must be balanced in shaping an 8(a) reform package. We must consider the legitimate interests of more mature 8(a) companies, the less mature firms, as well as future program participants. There are some big 8(a) concerns that can employ consultants, lawyers, lobbyists and whose voices have been and are being and will be heard clearly. Those are the ones we hear from most of all, almost exclusively sometimes it seems. But we are legislating for the long-term benefit of the entire disadvantaged business community. We cannot permit ourselves to be stampeded into making unfair concessions to firms that by any reasonable measure have already overcome their economic disadvantage. I view this time as a great opportunity for the improvement and advancement of the legitimate goals of the 8(a) Program, and I hope that all participants in the process can continue to proceed in this positive way.

Now I would like to turn to the legislation before us. I have several specific comments and recommendations regarding the Senate version that I respectfully submit for your consideration.

First of all, after we articulate once again that it is business development, not the number of contracts or the dollar amount of contracts that is the sole purpose of the program, then the most important thing we have to do in order to both spread the contracts around and avoid improper influence is introduce the element of competition into the program.

I have thought this for about a decade, and when we had this opportunity, there were many different approaches to take, and I suggested the simplest approach. The simplest is to have a threshold. People can argue about whether it is the most equitable, and so forth, but we've got to come up with something that is easy to administer too. In my judgment thresholds are the simplest, easiest to administer.

You can argue about what those threshold figures should be. Should it be \$1 million? Should it be \$2 million? People can beat you into the ground on that. But it seems to me that the House and the Senate have come up with threshold figures that will withstand objective, fair scrutiny and probably should be maintained.

As set forth in both bills, the thresholds provide many sole-source contracting opportunities as well as real and significant competition for larger contract dollars. My staff analysis of SBA figures, as poor as those SBA figures have been historically, indicate that over 90 percent of all 8(a)-contracts are still likely to remain sole-sourced under our thresholds, but approximately 50 percent of the 8(a) contract dollars will be competed. So, 90 percent of the contracts will still be sole-source. Only 10 percent of the contracts will be competed, but that 10 percent of the contracts will account for about 50 percent of the total contract dollars.

Presumably the more advanced 8(a) companies, those that are closer to graduation, will be more likely to compete for the large 8(a) contracts. This will provide them with useful experience that will prove beneficial in competing for contracts outside of the 8(a) Program. That is what we are trying to get them to be able to do. Meanwhile, the smaller sole-source contracts can be generally allocated among the newer firms according to their developmental needs.

Competitive thresholds also have the advantage of being easily administered, as I've said, and they will help to ensure that large 8(a) contract dollars are awarded according to merit rather than improper political influence or inside contacts.

I am, however, concerned about a Senate provision that would allow competition advocates within the Federal agencies the discretion to determine whether a procurement exceeding the thresholds should be competed in the 8(a) Program. Potentially this is a major loophole that in practice could be used to avoid competition.

I believe that the inclusion of the Rule of Two, providing that an affirmative competition decision must be preceded by a reasonable expectation that at least two eligible 8(a) firms will submit offers at a fair market price, is sufficient to prevent inappropriate or unnecessary competitions.

Second—and this is the next substantive provision, which is a major provision of the two bills, as I see it—and that's the 8(a)/non-8(a) mix. You see, historically most firms that have entered into the 8(a) Program have had two objectives. Get as many 8(a) contracts as they possibly can—and most have relied on 8(a) contracts almost exclusively—and get them for as long a period as they can. If they can be in the program 4 years, fine, 7 years, 9 years, 15 years, as long as they can. They really haven't had the objective, and the SBA hasn't had the objective of weaning them out of the 8(a) Program. The primary purpose of the 8(a) Program is once the

firms are in it, to wean them out of it. We have got to do something. And so, I'm supportive of the requirement that 8(a) firms develop increasing amounts of non-8(a) business as they progress through the 8(a) Program. That's in our House bill as it is in the Senate's.

However, I believe the Senate may have gone a little bit too far. I believe the Senate version is a little too rigid and that the appropriate 8(a)/non-8(a) business mix percentages should be goals rather than mandated requirements. There are many things outside the control of an 8(a) firm that could affect its ability to obtain non-8(a) work. The stock market crash in October, other periodic economic downturns, shifting Federal budget priorities may all temporarily limit the opportunities available to 8(a) firms outside of the 8(a) Program.

Within the 8(a) Program, the allocation of 8(a) contracts can be affected by contingencies over which a participating concern has no control. Contract scheduling, the reprogramming of funds, the unexpected consolidation of requirements may all serve to make a sales forecast something less than 100 percent accurate.

I do not think it is possible for us as legislators to specify the exact annual rate at which all firms in the program should decrease their reliance on 8(a) work. Is the slope provided for under S. 1993 too steep, not steep enough? Should it vary by industry? I believe we must provide some measure of discretion in these matters. If we do not, we may hurt the very firms we are trying to help while creating a logistical nightmare for the Administration as it attempts to allocate 8(a) contracting opportunities.

In short, I think we should have goals, but not these rigid requirements. I just don't think it is administratively possible. That is one of the problems with the 8(a) Program. We haven't been able to administer it. So, let's make changes in it: Competition, the 8(a)/non-8(a) mix. But let's not make them administrative nightmares. Let's not become micro-managers.

The same thing applies to when you were having a discussion with Senator Levin about the definition of socially and economically disadvantaged. When I heard that SBA defines socially and economically disadvantaged as somebody who has a net worth of less than three-quarters of a million dollars, I said, well, that means that about 99 percent of the American public is economically disadvantaged. That's crazy. I called Abdnor, Clarey, and Moffitt in, and I said that this has got to be changed. However, I do not think we should change it legislatively. You know that there's an appropriate role for legislation and an appropriate role for regulation. But I did say that before this bill becomes law, it better be changed administratively.

The first thing is to reduce the cut-off from 750 to 250 thousand. That sounds like a more reasonable figure to me.

When you start getting into the complexities of what happens after they're admitted into the program then you really do have a quagmire, a quagmire that I do not think we should address legislatively. It is too difficult to change it that way. But it is a quagmire that should be addressed administratively in my judgment, just as I think the initial threshold should be.

Now, developmental assistance, another important issue. Contract opportunities are just one tool that should be used to help 8(a) firms develop. The 8(a) Program should be valuable to a participants even if it receives a limited amount of 8(a) contracts. This could only occur though if a variety of substantial developmental assistance is provided in addition to contract support. I support, therefore, what the Senate version has done in this regard. But there are many other types of assistance provided for under H.R. 1807 that should be considered by the Senate for inclusion within your measure. If we are to refocus the program on business development, we must provide as much appropriate and legitimate business development assistance as practicable.

There is no doubt that the 8(a) Program has been poorly administered and that SBA has been seriously derelict in carrying out its responsibilities for operating the program. I am fully supportive of the provisions in the Senate bill to improve the skills of SBA personnel who work in the 8(a) Program. I also agree that comprehensive data collection is essential for proper program management. The lack of reliable data on the 8(a) Program is appalling. Further, I'm supportive of any attempts to improve the programs admission and certification process. As it is now, getting a decision about program entry takes far too long and involves far too much uncertainty. In addition, the certification process must be rationalized so that the Administration can control and properly manage the new portfolio firms that enter the program each year.

Waste, fraud, and abuse provisions. We must discourage the efforts of unscrupulous individuals who would not hesitate to steal program benefits from the intended beneficiaries of the program. Both the House and Senate bills include a series of measures designed to tighten the operations of the program and to better insulate it from abuse. Such initiatives can only help to restore integrity to the program and improve its public perception. It is in this vein, that I will support aggressive provisions relating to waste, fraud, and abuse.

Contract size limitations. I really don't think the provision precluding a firm from receiving an 8(a) contract exceeding 150 percent of its largest prior contract is workable. And the fact that you have waivers for it in the bill I do not think is workable either because you would have waivers all the time. Whenever you are constantly resorting to waivers, you're inviting abuse of the whole concept of the law. You have a lack of respect for the law if you expect the waiver rather than view the waiver as an exception.

If a firm got a \$20,000 contract, they would be ineligible for a \$30,000 contract. If they got a \$100,000 contract, they would be ineligible for a \$200,000 contract. The fact of the matter is that business growth does not progress at an automatic, arithmetic rate. Many times business growth can be exponential, particularly in this 8(a) Program. And so, I would hope that you would reconsider that provision.

Finally, I would like to highlight a few lesser known provisions in H.R. 1807 that are absent from the Senate version that I believe are important elements of a complete 8(a) reform package.

I hope the Senate would review further and consider adopting other provisions from the House bill such as those that increase

the authority of agency Directors of Small and Disadvantaged Business Utilization, eliminate unreasonable limitations on SIC code classifications, and provide exceptions to the nonmanufacturer rule.

Another provision in H.R. 1807 stipulates how agencies are to calculate fair market prices and entitles SBA and 8(a) firms to obtain an explanation of the method used by an agency in determining an FMP. This is important because there have been many cases in which agencies have used FMP calculations to restrict unfairly 8(a) contracting opportunities.

In closing, let me thank all the Members of the Small Business Committee for their kind attention, for their bipartisan cooperation in addressing an 8(a) reform bill and for their collegial approach with the House Small Business Committee in working out something that is mutually satisfactory.

Thank you.

[The prepared statement of Representative LaFalce follows:]

STATEMENT OF THE
HONORABLE JOHN J. LaFALCE
CHAIRMAN, HOUSE COMMITTEE ON SMALL BUSINESS
BEFORE THE
SENATE COMMITTEE ON SMALL BUSINESS
ON
S. 1993
February 18, 1988

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify before you today. I am pleased to provide my views on S. 1993, the companion bill to H.R. 1807, that passed the House of Representatives on December 1, 1987. The support for the bills and the similarities between S. 1993 and H.R. 1807 reflect a bipartisan spirit shared by both Houses of the Congress that, I am sure will lead to positive and effective reform legislation.

Before I provide my specific comments on S. 1993, I would like to share a few general thoughts and observations. I have been calling for the reform of the 8(a) program since 1980 when I was Chairman of the House Small Business Subcommittee that had responsibility over the program. In addition, I spent a great deal of time last year working for the passage of H.R. 1807. I hope that my perspective, as shaped by these experiences, will be of value to the Committee.

Initially, I believe that there is some confusion as to what the 8(a) program is all about. During the debate over H.R. 1807, significant controversy arose because of misperceptions about the

purpose of the 8(a) program. In our endeavors to reform the program, it is imperative that we maintain our focus on the central goal of the 8(a) program, namely, business development.

Throughout the history of the 8(a) program the goal of business development has been subjugated by special interests, improper influence, and a range of shifting political agendas spanning every Administration since 1968. In order to save this program, it is necessary to first reaffirm its purposes and to clearly stake out the public interest considerations that support our efforts.

The 8(a) program is not intended to benefit a limited number of individuals who wish to aggrandize personal wealth. Neither is the program primarily intended to multiply, at a random rate, the share of the Federal procurement budget spent with minority firms. Ensuring that minority firms attain a fair share of Federal procurement is a worthy goal -- and one which the 8(a) may help make a reality -- but this is not a direct purpose of the 8(a) program. The goal of this program is to redress the effects of past economic discrimination by assisting firms owned and controlled by "socially and economically disadvantaged" individuals become competitively viable. Its measure of success must be the number of competitive, on-going small business concerns that exit the program each year. The reform legislation that emerges from the Congress must firmly "shut the door" on those who would abuse the program in order to advance their own personal gain at the expense of the disadvantaged business community.

Second, I believe that there is some misunderstanding and tension surrounding efforts to reform the 8(a) program that we must address. It is understandable that many firms are anxious about the reform process. This is the first major reform of the program in a decade, and it represents a significant departure from the present statutory framework. I would, however, like to assure everyone that this is not a "knee-jerk" reaction to the Wedtech scandal. Efforts to reform the 8(a) program have been carefully thought out. It has been an exhaustive process, extending for well over a year, and all views have been solicited and considered.

It must be recognized though, that there are many different, and sometimes mutually exclusive, interests among disadvantaged business that must be balanced in shaping an 8(a) reform package. We must consider the legitimate interests of more mature 8(a) companies, the less mature firms, as well as future program participants. There are some big 8(a) concerns that can employ consultants, lawyers and lobbyists and whose voices have been and will be heard clearly. But, we are legislating for the long term benefit of the entire disadvantaged business community; we cannot permit ourselves to be stampeded into making unfair concessions to firms that, by any reasonable measure, have already overcome their economic disadvantage. I view this time as a great opportunity for the improvement and advancement of the legitimate goals of the 8(a) program, and I hope that all participants in the process can continue to proceed in this positive way.

Now I would like to turn to the legislation before us. I have several specific comments and recommendations regarding S. 1993 that I respectfully submit for consideration.

Competition. I fully support the inclusion of competitive thresholds in the Senate bill. We must have some competition within the 8(a) program so that developing companies may hone their competitive abilities.

The competitive threshold approach has many advantages. As set forth in both the House and Senate bills, the thresholds will provide many sole source contracting opportunities as well as real and significant competition for larger contract dollars. Analysis conducted by my staff indicates that over 90 percent of all 8(a) contracts are likely to remain sole sourced while approximately 50 percent of the 8(a) contract dollars will be competed. Presumably, the more advanced 8(a) companies -- those that are closer to graduation -- will be more likely to compete for the larger 8(a) contracts. This will provide them with useful experience that will prove beneficial in competing for contracts outside of the 8(a) program. Meanwhile, the smaller sole source contracts can be generally allocated among the newer firms according to their developmental needs. Competitive thresholds also have the advantage of being easily administered, and they will help to ensure that large 8(a) contract dollars are awarded according to merit rather than improper political influence or inside contacts.

I am, however, concerned about a Senate provision that would allow competition advocates within the Federal agencies the discretion to determine whether a procurement exceeding the thresholds should be competed in the 8(a) program. Potentially this is a major loophole that, in practice, could be used to avoid competition.

I believe that the inclusion of the "rule of two", providing that an affirmative competition decision must be preceded by a reasonable expectation that at least two eligible 8(a) firms will submit offers at a fair market price, is sufficient to prevent inappropriate or unnecessary competitions.

8(a)/Non-8(a) Business Mix. I am also strongly supportive of the requirement in S. 1993 that 8(a) firms develop increasing amounts of non-8(a) business as they progress through the 8(a) program. I believe, however, that the Senate provision on this matter is too rigid and that appropriate 8(a)/non-8(a) business mix percentages should be goals rather than mandated requirements. There are many things outside the control of an 8(a) firm that could effect its ability to obtain non-8(a) work. The stock market crash in October, other periodic economic downturns, or shifting Federal budget priorities, for example, may all temporarily limit the opportunities available to 8(a) firms outside of the 8(a) program.

Within the 8(a) program, the allocation of 8(a) contracts can be affected by contingencies over which a participating concern has

no control. Contract scheduling, the reprogramming of funds, the unexpected consolidation of requirements, may all serve to make a sales forecast something less than one hundred percent accurate.

I do not think that it is possible for us, as legislators, to specify the exact annual rate at which all firms in the program should decrease their reliance on 8(a) work. Is the slope provided for under S. 1993 too steep or not steep enough? Should it vary by industry? I believe that we must provide some measure of discretion in these matters. If we do not, we may hurt the very firms we are trying to help while creating a logistical nightmare for the Administration as it attempts to allocate 8(a) contracting opportunities. Clearly, we must focus the attention of both SBA and the program participants on the need to avoid dependency on 8(a) work. However, I believe it is best to set goals in this regard, not mandated percentages. If the goals are not met, SBA would have available to it a variety of remedial measures that can be utilized in a manner most appropriate to the particular situation at hand.

Developmental Assistance. Contract opportunities are just one tool that should be used to help 8(a) firms develop. The 8(a) program should be valuable to a participants even if it receives a limited amount of 8(a) contracts. This can only occur, though, if a variety of substantial developmental assistance is provided in addition to contract support. I support what S. 1993 has done in this regard. There are, however, many other types of assistance provided for under H.R. 1807 that should be considered for inclusion

within the Senate measure. If we are to refocus the program on business development, we must provide as much appropriate and legitimate business development assistance as practicable.

Program Administration. There is no doubt that the 8(a) program has been poorly administered and that SBA has been seriously derelict in carrying out its responsibilities for operating the program. I am fully supportive of the provisions in S. 1993 to improve the skills of SBA personnel who work in the 8(a) program. I also agree that comprehensive data collection is essential for proper program management. The lack of reliable data on the 8(a) program is appalling. Further, I am supportive of any attempts to improve the program's admission and certification process. As it is now, getting a decision about program entry takes far too long and involves far too much uncertainty. In addition, the certification process must be rationalized so that the Administration can control and properly manage the new portfolio of firms that enter the program each year.

Waste, Fraud and Abuse Provisions. We must discourage the efforts of unscrupulous individuals who would not hesitate to steal program benefits from the intended beneficiaries of the program. Both the House and Senate bills include a series of measures designed to tighten the operations of the program and to better insulate it from abuse. Such initiatives can only help to restore integrity to the program and improve its public perception. It is in this vein, that I will support aggressive provisions relating to

waste, fraud and abuse.

Contract Size Limitations. I am deeply concerned by the limitation in S. 1993 that would preclude a firm from receiving an 8(a) contract exceeding 150 percent of its largest prior contract. Certainly a firm should be determined to have the managerial, financial, and technical capabilities to adequately perform a contract; but, to restrict a firm to contracts of a certain size could run counter to the business development objectives of the program. Business growth does not necessarily progress at an arithmetic rate. Many times it is exponential. I would hope that this provision can be either deleted or substantially amended.

Miscellaneous Provisions. Finally, I would like to highlight for the Committee a few lesser known provisions in H.R. 1807 that are absent from S. 1993, but which I believe are important elements of a complete 8(a) reform package.

I hope that the Senate would review further and consider adopting other provisions from H.R. 1807 such as those that increase the authority of agency Directors of Small and Disadvantaged Business Utilization; eliminate unreasonable limitations on SIC Code classifications; and provide exceptions to the "non-manufacturer" rule.

Another provision in H.R. 1807 stipulates how agencies are to calculate "fair market prices" (FMPs) and entitles SBA and 8(a)

firms to obtain an explanation of the method used by an agency in determining a FMP. This is important because there have been many cases in which agencies have used FMP calculations to restrict unfairly 8(a) contracting opportunities.

In closing, let me thank the Chairman and Members of the Committee again for the opportunity to present my views here today. With or without Wedtech, the 8(a) program needed major reform. I am excited about the possibilities we are creating for the program and believe we are providing SBA with the direction and tools that can make the 8(a) program what it was meant to be by the Congress.

Thank you.

The CHAIRMAN. Chairman LaFalce, thank you very much for your critique of our bill and your observations about it. I must say that many of your points are certainly well taken. Let me defer at this time to Senator Weicker.

Senator WEICKER. Thank you very much, Mr. Chairman.

Congressman, for discussion purposes, to inject competition into the program for large dollar contracts, we used the same provision as the House bill: 8(a) firms must bid on all contracts of \$2 million or more for some industries, \$1 million or more for others.

This Committee has received a large amount of criticism on this program from 8(a) contractors who raise the following concerns. One, competition among 8(a) firms would be contrived and not very meaningful. Two, the thresholds are too low and will disrupt the growth rate of many firms. Three, the amount of time it takes to go through the bid process would discourage agencies offering 8(a) contracts. Four, self-marketing, which is the driving force of the program, would be discouraged because the firms that did most of the work could lose the bid. And lastly, large contractors would most likely win the competitions.

So, I really think this might be a good opportunity for you to go ahead and address these particular concerns.

Representative LAFALCE. Sure. We have got a free market system in the United States. We've got a competitive system. That's the basis of our free enterprise system. We have made certain exceptions for it. The 8(a) Program is an exception. It has been 100 percent sole-source; and we have had tremendous abuses—tremendous abuses. Wedtech is not an isolated instance. The program has not accomplished its purpose. It has not been a business development program. The only way we are going to reform the program is if we introduce the element of competition into it.

Now, will the element of competition mean there are going to be problems for certain individuals who have been in it? You bet. Sure it is going to mean problems for some because they've been living off the fat of the land. The more influential they are, the better lawyers they have, the better paid consultants they have, the more likely they are to get contracts. They've got a good thing. They know a good thing when they see it. They don't want changes. They love the 8(a) Program the way it has been. There have been program abuses. As long as the program abuses don't affect them, they don't really care. Besides for every one abuse that is caught, they think there are probably 100 that haven't been caught.

Competition is going to stop this. That's the primary reason they don't like competition. They come up with a whole lot of other ostensible excuses too. Now, would I rather get something on a sole-source basis as opposed to competition? Sure, because once I have to engage in competition, that means I might not get it.

Now, there is nothing magic about these thresholds. I came up with \$1 million for agriculture, \$2 million for construction, and so forth. But let me tell you what I tried to do. In agriculture, for example, with a \$1 million threshold, 98 percent of your contracts would still be sole-sourced. Only 2 percent of your number of contracts would be in competition—2 percent. But that would account for 30 percent of the total contract dollars. Individuals, therefore,

who complain about agricultural contracts are talking about 2 percent of the total number of contracts.

Construction. I suggested a \$2 million threshold. Ninety-seven percent of all 8(a) construction contracts would still be sole-sourced. Three percent would be competed. But that 3 percent would account for 37 percent of the dollars that are involved.

So, I do not think when we're talking about 2 percent, 3 percent 4 or 5 percent of the contracts, maybe as much as 10 percent in certain areas being competed, that we are causing too much difficulty to the 8(a) contractors. It is only for these bigger contracts that we are requiring competition. And besides, you say under competition the bigger firms are the ones that are going to get the contracts. They are the ones who have the influence right now. They are the ones who have been getting the contracts. I'd like to give the little guy at least a fighting chance. Competition gives the little guy a fighting chance.

Senator WEICKER. To reduce over-dependence on 8(a) contracts, the Senate bill requires firms to obtain a certain percentage of non-8(a) work after being in the program for 4 years. This percentage increases each year until graduation. The House bill does not have mandated percentages, but establishes goals to encourage firms to develop non-8(a) support. GAO will testify later today that firms still leave the program with as much as 90 percent dependence on 8(a) contracts. Do you believe goals will be sufficient to address the problem?

Representative LAFALCE. First of all, one of my primary concerns has been that the 8(a) firms have really not tried to get non-8(a) business. They spend all their time getting 8(a) contracts and ensuring that they stay in the program as long as they can. If they could have made this program a 20 year program, it would have been great. They really didn't care about the small socially and economically disadvantaged firm that wasn't in the program. Once they're in, they want to stay in forever. They want to get as many 8(a) contracts as they possibly can. It is therefore imperative that we establish legislatively that we must wean program participants off of the 8(a) contracts.

However, I don't think we can be too rigid about this. We have to establish goals, and we have to ensure that the SBA administers the program better in the future than it has in the past. But if we set up this strait jacket, we are creating a procrustean bed for the 8(a) firms, and we will chop their heads and chop their legs off if we have rigid quotas as opposed to goals.

Generally speaking, I believe in goals as opposed to quotas whether it is affirmative action or whatever it might be. It is certainly true here too. It also is true in other areas where we talk about the amount of contracts that should go to minorities, but that's a separate subject. I would rather not get into that. That does not involve the 8(a) Program at all.

Senator WEICKER. Lastly, to ensure that minority businesses get a fair share of Federal Government procurement, the Senate bill establishes a 5 percent Governmentwide minority procurement goal. What is your position on this provision?

Representative LAFALCE. I don't think we should mix apples and oranges. The 8(a) Program should not be confused in any way, as

far as I'm concerned, with the percentage of contracts going to the minority business community. I just do not like the concept of confusing the mission of the 8(a) Program with the goal of setting aside a certain percent of the contracts either by quota or by goal for the minority community.

I think that has been one of the problems in the past. Administrations have said we increased the dollar amount of contracts going to 8(a) firms whether it was the Carter Administration or the Reagan Administration, and that was viewed as the sign of program success. It is not the sign of program success. As a matter of fact, it is more likely a measure of program abuse for political purposes.

That can be a laudatory goal, but it should not be the goal of the 8(a) Program. The goal of the 8(a) Program is business development—business development.

Senator WEICKER. Thank you very much, Mr. Chairman.

Representative LAFALCE. That's my thought.

The CHAIRMAN. Mr. Chairman, Senator Weicker has asked most of the questions that I had, and you have already articulated answers in your statement and answers to his questions concerning the questions I had for you. So, with that I just thank you very much for your analysis of our bill and suggestions. And you certainly have put your finger on the problems we're going to be wrestling with here. Thank you very much for coming over this morning.

Representative LAFALCE. Thank you, Senator. Thank you.

[The prepared statement of Senator Weicker follows:]

OPENING STATEMENT OF SENATOR LOWELL WEICKER

ON

S. 1993

FEBRUARY 18, 1988

TODAY'S HEARING IS THE SECOND IN A SERIES THAT THIS COMMITTEE IS CONDUCTING TO AIR, AND INCLUDE IN THE RECORD, REACTIONS TO S. 1993, THE "MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987". SENATOR BUMPERS AND I, ALONG WITH OUR STAFFS, HAVE MADE THIS LEGISLATION A NUMBER ONE PRIORITY BECAUSE WE ALL FEEL THE NEED TO PRESERVE THE 8(A) PROGRAM AND REALIZE THIS CANNOT BE DONE UNLESS SOME BASIC CHANGES ARE MADE IN ITS OPERATION. WITNESSES TODAY WILL PRESENT TESTIMONY THAT WILL BE EXTREMELY HELPFUL TO THE COMMITTEE AS WE PROCEED THROUGH THE FINAL STAGES OF THIS PROPOSED LEGISLATION.

SENATOR CARL LEVIN WILL REPORT THE FINDINGS OF HIS SUBCOMMITTEE'S INTENSIVE INVESTIGATION OF THE WEDTECH CASE. I WISH TO COMMEND MY COLLEAGUE FOR HIS EXHAUSTIVE EFFORTS TO GET TO THE BOTTOM OF THIS COMPLEX AND HIGHLY PUBLICIZED CASE OF ABUSE BY A FIRM IN THIS PROGRAM. I ALSO WELCOME THE CHAIRMAN OF THE HOUSE SMALL BUSINESS COMMITTEE, JOHN LAFALCE AND CONGRATULATE HIM FOR HIS COMMITTEE'S SUCCESS IN GETTING H.R. 1807, THE HOUSE MINORITY BUSINESS DEVELOPMENT BILL, PASSED LAST YEAR.

GAO WILL REPORT THE FINDINGS OF AN EXTENSIVE REVIEW AND EVALUATION OF CERTAIN PERFORMANCE AND MANAGEMENT ASPECTS OF THE

8(A) PROGRAM. MR. JOHN LUKE OF GAO AND HIS STAFF WILL PRESENT THE TESTIMONY. UPDATING THE 1981 GAO STUDY OF THE PROGRAM, THEIR REPORT WILL SHOW THAT MANY OF THE SAME MANAGEMENT PROBLEMS PERSIST TODAY. HOWEVER, THEY WILL ALSO REPORT ON A SURVEY CONDUCTED OF OVER 800 CONTRACTING OFFICERS WHICH REVEALED THAT 8(A) FIRMS PERFORMED AS SATISFACTORILY AS ANY OTHER SMALL BUSINESSES AND IN SOME CASES, BETTER.

A VERY IMPORTANT PART OF TODAY'S HEARING WILL INCLUDE TESTIMONY FROM 8(A) CONTRACTORS. MICHAEL GOODEN, PRESIDENT OF INTEGRATED SYSTEMS ANALYSTS, INC. WAS IN THE PROGRAM FIVE YEARS AND LEFT VOLUNTARILY. I UNDERSTAND MR. GOODEN HAS BEEN QUITE RESOURCEFUL TO OUR STAFFS OVER THE PAST YEAR IN SHARING HIS VIEWS AND EXPERIENCE ON THIS AND OTHER MINORITY BUSINESS PROGRAMS AND I WOULD LIKE TO EXPRESS MY SINCERE APPRECIATION TO HIM AT THIS TIME. DR. ROBERT SAUCEDO WILL REPRESENT HIS FIRM, THE CASDE CORPORATION OF CALIFORNIA AND THE LATIN AMERICAN MANUFACTURERS ASSOCIATION. DR. SAUCEDO TRAVELED A LONG WAY TO GET HERE AND WE WELCOME HIM.

MR. CHAIRMAN, I LOOK FORWARD TO HEARING THE TESTIMONY OF ALL OF TODAY'S WITNESSES AND AGAIN EXPRESS APPRECIATION FOR THEIR TIME AND INTEREST IN THIS LEGISLATION.

The CHAIRMAN. Our next witness is Mr. John Luke, Associate Director, Resources, Community and Economic Development Division of GAO. Mr. Luke is accompanied by Richard Hart and Paul Elmore. Mr. Luke, if at all possible, I would like to get out of here by a quarter of 12 for another engagement. If we could limit your statement to 10 or 15 minutes and, say, 5 minutes of questioning, that will be very helpful to me in meeting my own schedule. Is that possible?

Mr. LUKE. I'll do the best I can, Mr. Chairman.

The CHAIRMAN. Thank you very much.

STATEMENT OF JOHN H. LUKE, ASSOCIATE DIRECTOR, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY RICHARD A. HART, GROUP DIRECTOR; AND PAUL K. ELMORE, EVALUATOR, GAO

Mr. LUKE. As you indicated, Mr. Chairman, with me I have Paul Elmore, who directed our specific or ongoing effort with respect to the 8(a) Program, and Dick Hart who directs all of our economic business development activities.

Mr. Chairman, I would like to thank you for having us here today, and we appreciate the opportunity to assist your Committee in considering some of the important issues surrounding the Small Business Administration's 8(a) Program. As you know, we are currently conducting a review of this program at the request of Chairman Jack Brooks, House Committee on Government Operations. My remarks today represent preliminary observations on the results of our review and their relevancy to your current bill, S. 1993.

Specifically the objectives of our review are to determine contractor performance on 8(a) contracts, SBA's administration and management of the program, and try and get some feel for the impact of the program on non-8(a) businesses. My remarks today will focus pretty much on the first two of those objectives.

In general our work supports the intent of S. 1993, particularly the changes encouraging and assisting 8(a) firms to develop their businesses as they progress through the program. The current review is our first comprehensive look at the 8(a) Program since our April 8, 1981 report entitled "The SBA 8(a) Procurement Program: A Promise Unfulfilled." In that report we stated that the program had done too much for too few for too long, and that only a few companies had graduated from the program as self-sufficient businesses. The program has not really changed except that many of the older firms have graduated, reached the end of their fixed program participation term, if you will.

A large percentage of the 8(a) contract dollars continues to go to a small number of firms, and the program still is not doing a good job in developing self-sufficient businesses, firms that do not depend on 8(a) sales for a large part of their business. In my testimony today I will present a statistical overview of the program, highlight some management problems that we observed with SBA's program, and comment on areas of our work that may be related to your bill, S. 1993.

Our study revealed that less than 2 percent of the Federal Government's procurement dollars are awarded to 8(a) firms. Specifically, according to published data by the Federal Procurement Data Center, the Federal Government procured about 1.8 percent of its goods and services through the 8(a) Program. In total, the Federal Government procured a little less than 3 percent from minority and disadvantaged businesses in terms of dollar terms.

In addition to determining the procurement dollars that went to 8(a) firms, we also developed a statistical profile that looked at the firms' graduation rates, minority mix, business categories, and location. SBA data show that since the inception of the program in 1968 through fiscal year 1987, 1,287 firms have graduated from the program. Of these, 976 or about 76 percent graduated during the last 3 fiscal years. This is the result of P.L. 96-481, enacted October 2, 1980, which requires SBA to establish a graduation date for each firm. Also, SBA's data reveal that as of September 30, 1987, 72 percent of the 2,938 active firms have been in the program 5 years or less.

As for the minority mix of the program participants, we found that the number of firms in each minority category have increased over the period from 1982 to 1987. However, the mix within active participants has changed. The most noticeable change are an 11 percent decrease in Black participation and an increase in all other minority groups, particularly for Asians for which there was approximately a 6 percent increase in their participation.

Similar to the minority mix change, the business classification of firms in the 8(a) Program has also seen an increase in the number of firms in each classification except nonprofessional services. The most noticeable changes from 1982 to 1987 are an 8 percent increase in professional service firms and about a 7 percent decrease in nonprofessional service firms.

Geographically the 2,938 active 8(a) firms as of September 30, 1987, were dispersed throughout all 10 SBA regions, ranging from a low of 108 firms in the Boston region to a high of 681 firms in the Philadelphia region. The greatest concentration of firms was in the Washington, DC, San Francisco, and Los Angeles metropolitan areas which combined had about 22 percent of the active firms and about 29 percent of the 8(a) contract dollars.

We also wanted to determine how well 8(a) firms performed. To do this we conducted a mail survey of Federal contracting officers responsible for 8(a) contracts. On the basis of 78 percent of the contracts in our sample, I can report that in general most 8(a) firms performed satisfactorily. Contracting officers reported that all or most of the delivery dates were met on over 75 percent of the contracts and that for about 90 percent of the contracts, the products or services delivered met or exceeded quality specifications.

Our study also looked at the performance of 8(a) firms in comparison with performance of non8(a) firms. For about half of the contracts, the contracting officers reported that they were also responsible for non8(a) contracts in the same or similar industries. The contracting officers reported that the 8(a) firms' performance in meeting delivery dates for about 75 percent of the contracts was equal to or better than non8(a) firms. For about 85 percent of the

contracts, the 8(a) firms performed the same or better than the non8(a) firms in quality of goods or services that they delivered.

Finally, in comparing 8(a) and non8(a) contracts, the contracting officers rated 36 percent of the 8(a) contracts to be more costly to the Government, whereas they rated 9 percent of the non8(a) contracts to be more costly to the Government.

I would like to turn now to the issue of how much the program does for participating firms. As you recognized earlier with respect to our 1981 report, we reported that 50 firms had received about 31 percent of the total value of the 8(a) contracts awarded. In fiscal year 1987 the top 50 firms received about 35 percent of the 8(a) dollar volume in business. As you would note in the graphic before you now, approximately 38 percent of the firms in 1987 received no contracts. Approximately 17.5 percent of the firms received contracts in total dollar volume of less than \$100,000. About 42 percent of the firms received contracts ranging from above \$100,000 to below \$10.5 million. And approximately 1.6 percent of the top 50 firms received 35 percent of the total contract dollars. The 42.2 percent received approximately 64 percent of the dollars, and less than 1 percent of the dollars went to 17.5 percent of the firms.

But looking closer at the 1.6 percent of the firms, the top 50, if you will, you can see from a business class perspective that professional services pretty much dominate the top 50 firms. Twenty-nine firms represented roughly 68 percent of all sales of the top 50. With respect to minority class, Black and Spanish-American firms represented 38 percent of the top 50, and that's approximately 80 percent of the dollars of the top 50 firms.

The CHAIRMAN. You don't mean 38 percent. You mean 38 of the top 50 contracts.

Mr. LUKE. Right, absolutely. Thirty-eight of the 50 firms were Black and Spanish-American and represented 80 percent of the business roughly of the top 50.

We found a similar lack of progress in the program's effectiveness in assisting firms in becoming self-sufficient. We concluded in our 1981 report, and it appears that we can report today, that the program is still not doing a very good job in developing self-sufficient businesses. Our reason for saying this is based on: One, the results of this Committee's 1987 survey of 8(a) graduates; and the analysis of our own sample during our current job.

Sales information in SBA's files was available for 35 firms that had been in the program for 7 years or more to show their dependency on the 8(a) Program. Although most of these firms either have graduated or will graduate from the program before the end of fiscal year 1988, many have not developed their non-8(a) business. In contrast to the 75-25 non-8(a)/8(a) mix proposed in S. 1993 for firms that have been in the program for 7 years, the 8(a) sales for 11 of those 35 firms represented 90 percent or more of their total sales after 7 years. The 8(a) sales for an additional 16 firms ranged between 38 percent and 87 percent of total sales. Only 8 of the 35 firms in our sample met or exceeded the bill's non-8(a)/8(a) mix of 75-25. As a group, however, I should point out these firms tended to be small when compared with the firms that were more dependent on 8(a) sales.

Included in our sample were 10 of the 50 firms that had received the most 8(a) business in fiscal year 1987 and for which we had a 5-year history of 8(a) and non8(a) business sales information. In analyzing the sales growth of these firms, we found that their average total sales increased from \$3.8 million to \$20.8 million during the 5-year period. Over 75 percent of that growth, however, came through 8(a) sales.

S. 1993 addresses a mix of 8(a)/non8(a) patterns based on years of participation in the program and provides for competing 8(a) business to guard against political influence, favoritism, and outright fraud that has haunted the program through award of large 8(a) contracts; and two, encourage business development. Competition would be basically required on all awards over \$2 million. SBA data indicate that the \$2 million threshold requirement could significantly contribute to achieving the first objective, but would have little impact on the second. Our analysis of 8(a) contracts awarded in fiscal year 1985 through 1987 showed that while between 49 and 60 percent of the 8(a) contract dollars were involved in contracts over the \$2 million threshold, only about 6 percent of the number of contracts awarded in 1985 and 1986 and less than 5 percent, or 187, of the contracts for 1987 exceeded the threshold.

If the threshold were to be set at \$1 million, the data show that between 9 and 12 percent of the contracts during fiscal years 1985 through 1987 would have been awarded competitively, thereby giving 8(a) firms more opportunity to compete.

Our study also considered SBA's management of the 8(a) Program. To help foster business ownership by socially and economically disadvantaged individuals and promote the competitive viability of firms, SBA's procedures require each 8(a) firm to prepare a business plan that includes the objectives, goals, and projections of the firm. The plan helps identify the resources a firm needs to become a self-sustaining, profit-oriented small business.

In addition, SBA district or regional management is required to conduct annually a thorough review and analysis of each firm to evaluate factors such as these: its progress in achieving business development objectives; its ability to compete in the marketplace; its current financial condition; its past performance on 8(a) contracts; and its potential for success. SBA's management must also make sure that the firm continues to be owned, managed, and controlled by a socially and economically disadvantaged individual or individuals.

In addition, the business opportunity specialist, the SBA person that is responsible for providing management, marketing, technical, financial, and procurement assistance to the firm, is supposed to visit each firm annually.

To further assist SBA in its oversight responsibility, 8(a) firms are required to submit quarterly and annual financial statements. Audited financial statements are required if the firm's annual gross receipts were \$1 million or more.

As mentioned earlier, we conducted a detailed file review of the 142 8(a) firms in our sample. Our work showed that for the last 5 fiscal years, the files do not contain evidence that all required annual reviews were made for 108 of the 142 firms, that all required site visits were made for the 122 of the firms, and that all

required financial statements were received for 57 of the firms. We also observed instances of SBA accepting financial statements prepared by the owners rather than the required audited financial statements.

SBA district and regional officials acknowledged that all required annual reviews and site visits were not being made and some financial information was missing, but commented that the program had never been staffed adequately. In this regard, we concluded in our 1981 report that SBA did not have the staff to effectively manage the program. Since then the number of 8(a) firms per BOS has increased from a 17 to 1 ratio to a 26 to 1 ratio. At the district offices that we visited, the ratio of 8(a) firms to BOSs ranged from 20 to 1 to 38 to 1. While S. 1993 would set a 20 to 1 ratio goal, SBA's Deputy Associate Administrator for Office of Minority Small Business and Capital Ownership Development told us that SBA would like to achieve a staffing ratio of 10 to 15 firms per BOS. In addition, the National Association of Public Administration's study stated that SBA has a need for better trained staff as well as more staff.

Our study also looked at the issue of economic disadvantage. P.L. 95-507 limits the 8(a) Program to firms owned and controlled by individuals who are both socially and economically disadvantaged. Although SBA's regulations define economically disadvantaged individuals and provide general criteria, SBA has basically considered anyone that is socially disadvantaged to be economically disadvantaged as well.

However, in its standard operating procedures dated April 27, 1987, for the first time SBA set a personal net worth threshold for determining economically disadvantaged. These procedures state that, "Generally, individuals having a net worth of less than \$750,000 will be considered to be economically disadvantaged, absent a clear showing to the contrary."

In commenting on the H.R. 1807, a companion bill to S. 1993, SBA's Associate Deputy Administrator for Management and Administration on September 29, 1987, stated that SBA believes that the \$750,000 figure should be lowered to \$250,000 to \$300,000 with a provision to deal with situations where assets warrant exception. SBA has not made a decision on this matter.

Because the law requires that the program be directed to both socially and economically disadvantaged individuals, the uncertainty of what is meant by economically disadvantaged and what action SBA should take under the circumstances should be clarified.

And finally, Mr. Chairman, on the basis of our study, we believe that SBA's practice of awarding contracts with options needs clarification as well. SBA will award contracts with renewable options to 8(a) firms up to and including its last day in the program. This practice can result in the removal of future contracts for goods or services from the 8(a) Program for several years if the Government chooses to exercise the contracting options, and could adversely impact the developmental needs of other firms in the program with the same or similar types of business.

Of the 142 firms in our sample, 23 graduated between August 1986 and December 1987. Of these, six firms received one or more

contracts during the firm's last month in the program. One nonprofessional service firm, for example, was awarded 13 contracts during its last month in the program of which 7 were dated on the firm's last day in the program. At least 12 of the contracts included options ranging from 1 to 4 years. The other contract may have had options, but SBA could not locate the contract file. Including the value of the options, the aggregate dollar amount of the 13 contracts is at least \$4.3 million which was about equal to the value of all contracts and modifications received by the firm during the period October 1981 to August 1987.

We recognize that many of the graduating firms are highly dependent on 8(a) sales, and if they were denied 8(a) business, they could have a more difficult time competing outside the protection of the 8(a) Program. However, if the firms are encouraged to develop their own non-8(a) business as they move through the program, as proposed by S. 1993, then changing the policy so that contracts are awarded without options to graduating firms may not be a detrimental to their business.

In summary, Mr. Chairman, the General Accounting Office is in agreement with the changes proposed to strengthen the 8(a) Program. Based on our work to date for the House Committee on Government Operations, we believe that the combined effect of the proposed legislative changes encouraging 8(a) firms to develop their non-8(a) business as they progress in the 8(a) Program should result in a wider distribution of the 8(a) Program among the participants and better prepare them to make the transition into the mainstream.

Mr. Chairman, that concludes my prepared statement, and I will be pleased to respond to any questions that you may have at this time.

[The prepared statement of Mr. Luke follows:]

United States General Accounting Office

GAO

Testimony

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Review of SBA's 8(a) Procurement Program

Statement of
John H. Luke, Associate Director
Resources, Community, and Economic
Development Division

Before the
Committee on Small Business
United States Senate



Mr. Chairman and Members of the Committee:

We appreciate the opportunity to assist your Committee in considering some of the important issues surrounding the Small Business Administration's (SBA) 8(a) program. As you know, we are currently conducting a review of this program at the request of Chairman Jack Brooks, House Committee on Government Operations. My remarks today represent preliminary observations on the results of our review and their relevancy with respect to your current bill, S. 1993. The bill discourages the overdependence of program participants on 8(a) contracts by requiring a business mix that reflects increasing percentages of non-8(a) contracts as a firm approaches graduation and by fostering competition among program participants for the award of 8(a) contracts over a given threshold.

The objectives of our study are to evaluate three aspects of the 8(a) program:¹

- contractor performance on 8(a) contracts,
- administration and management of the program by SBA, and
- the impact of the program on non-8(a) small businesses.

My remarks today focus primarily on the first two of these objectives.

¹To accomplish these objectives, we have (1) conducted a detailed review of business development and contract files on 142 8(a) firms at 6 of the larger SBA district offices in 3 SBA regions; (2) interviewed SBA district, regional, and headquarters officials; (3) interviewed procurement policy officials at selected Department of Defense and civil agencies and officials representing selected private interest groups; and (4) sent a mail survey to government contracting officers nationwide that were administering over 800 active and closed 8(a) contracts.

In general, our work supports the intent of S. 1993, particularly the changes encouraging and assisting 8(a) firms to develop their businesses as they progress through the program. The current review is our first comprehensive look at the 8(a) program since our April 8, 1981, report entitled The SBA 8(a) Procurement Program: A Promise Unfulfilled (CED-81-55). In that report, we stated that the program had done "too much" for "too few" for "too long" and that only a few companies had graduated from the program as self-sufficient businesses. The program has not really changed except that many of the older firms have graduated--reached the end of their fixed program participation term. (Exhibit A)

A large percentage of the 8(a) contract dollars continues to go to a small number of firms and the program still is not doing a good job in developing self-sufficient businesses--firms that do not depend on 8(a) sales for a large part of their business. In my testimony today, I will present a statistical overview of the program, highlight some of the management weaknesses we observed, and comment on areas of our work that are related to S. 1993. (I should point out that we used SBA's financial information system for the statistical overview, although that data, while the best available, were not totally accurate.)

OVERVIEW OF PROGRAM

Our study revealed that less than 2 percent of the federal government's procurement dollars were awarded to 8(a) firms. The 8(a) procurement program is available only to companies whose owners have been certified by SBA as socially and economically disadvantaged and eligible to receive federal contracts without competition. SBA contracts for the work with the federal agencies and then "subcontracts" with the 8(a) firms to fulfill the contract. Much of the time, the firms have already been selected by the federal agency, and SBA only fulfills the role of awarding the contract to the 8(a) firm. According to information published

by the Federal Procurement Data Center, the federal government procured about 1.8 percent of its goods and services through the 8(a) program--\$3.1 billion of \$178.5 billion--in fiscal year 1987. (Exhibit B)

Profile of 8(a) firms

In addition to determining the procurement dollars that went to 8(a) firms, we also developed a statistical profile that looked at the firms' graduation rates, minority mix, business categories, and location. SBA data show that since inception of the program in 1968 through fiscal year 1987, 1,287 firms have graduated from the program. Of these, 976, or about 76 percent, graduated during the last 3 fiscal years. This is a result of P.L. 96-481, enacted October 2, 1980, which requires SBA to establish a graduation date for each firm. Also, SBA's data reveal that, as of September 30, 1987, 72 percent of the 2,938 active firms have been in the program 5 years or less.

As for the minority mix of program participants, we found that the number of firms in each minority category have increased over the period from 1982 to 1987. However, the mix within active participants has changed. The most noticeable changes are an 11-percent decrease in Black participation and an increase in all other minority groups, particularly for Asians--for which there has been approximately a 6-percent increase. (Exhibit C)

Similar to the minority mix change, the business classification of firms in the 8(a) program has also seen a increase in the number of firms in each classification except for nonprofessional services. The most noticeable changes from 1982 to 1987 are an 8-percent increase in professional service firms and about a 7-percent decrease in nonprofessional service firms. (Exhibit D)

Geographically, the 2,938 active 8(a) firms as of September 30, 1987, were dispersed throughout all 10 SBA regional offices--ranging from a low of 108 firms in the Boston region to a high of 681 firms in the Philadelphia region. The greatest concentration of firms was in the Washington, D.C., San Francisco, and Los Angeles metropolitan areas which combined had about 22 percent of the active firms and about 29 percent of the 8(a) contract dollars. (Exhibit F)

Performance of 8(a) firms

We also wanted to determine how well 8(a) firms performed. To do this, we conducted a mail survey of federal contracting officers responsible for 8(a) contracts.² On the basis of 78 percent of the contracts in our sample, I can report that, in general, most 8(a) firms performed satisfactorily. Contracting officers reported that all or most of the delivery dates were met on over 75 percent of the contracts and that for around 90 percent of the contracts the products or services delivered met or exceeded quality specifications. Our study also looked at the performance of 8(a) firms in comparison with the performance of non-8(a) firms. For about half of the contracts, the contracting officers reported that they were also responsible for non-8(a) contracts in the same or similar industries. The contracting officers reported that the 8(a) firms' performance in meeting delivery dates for about 75 percent of the contracts was equal to or better than non-8(a) firms. For about 85 percent of the contracts, the 8(a) firms performed the same or better than the non-8(a) firms in the quality of goods or services they delivered. Finally, in comparing 8(a) and non-8(a) contracts, the contracting officers rated 36 percent

²Our surveys focused on both active and closed contracts. We sent out a total of 845 questionnaires and received responses for about 85 percent of the contracts.

of the 8(a) contracts to be more costly to the government, whereas they rated 9 percent of non-8(a) contracts to be more costly.

Respondents were also asked about the amount of performance-monitoring required by their agencies for 8(a) firms compared with non-8(a) firms over the last 2 years. Responses on nearly half of the questionnaires indicated that 8(a) firms required somewhat more or much more monitoring, about 40 percent indicated that 8(a) firms required about the same monitoring, and less than 5 percent indicated that 8(a) firms required somewhat or much less monitoring.

FEW FIRMS STILL DO MOST
OF 8(a) DOLLAR VOLUME

I would like to turn now to the issue of how much the program does for the participating firms. In our 1981 report, we reported that 50 firms had received about 31 percent of the total value of the 8(a) contracts awarded. In fiscal year 1987, the top 50 firms received about 35 percent of the 8(a) dollar volume of business. (Exhibit B) In contrast, 1,225 active firms did not do any 8(a) business in fiscal year 1987 and another 555 firms did \$100,000 or less of 8(a) business.

8(a) FIRMS STILL NOT BEING
DEVELOPED INTO SELF-SUFFICIENT BUSINESSES

We found a similar lack of progress in the program's effectiveness in assisting firms in becoming self-sufficient businesses. We concluded in our 1981 report, and it appears that we can report today, that the program is not doing a very good job in developing self-sufficient businesses. Our reason for saying this is based on (1) the results of this Committee's 1987 survey of 8(a) graduates and (2) the analyses of our sample firms. Sales information in SBA's files was available for 35 firms that had been

in the program for 7 years or more to show their dependency on the 8(a) program. Although most of these firms either have graduated or will graduate from the program before the end of fiscal year 1988, many have not developed their non-8(a) business. In contrast to the 75/25 non-8(a)/8(a) mix, proposed in S. 1993 for firms that have been in the program for 7 years, the 8(a) sales for 11 firms represented 90 percent or more of the total sales after 7 or more years in the program. The 8(a) sales for an additional 16 firms ranged between 38 percent and 87 percent of total sales. Only 8 of the 35 firms met or exceeded the bill's non-8(a)/8(a) mix of 75/25. As a group, however, these firms tended to be small when compared with the firms that were more dependent on 8(a) sales--sales of the 8 firms averaged \$2.0 million and ranged between \$107,000 and \$13.1 million and sales of the other 27 firms averaged \$9.6 million and ranged between \$23,000 to \$52.1 million. (Exhibit I)

Included in our sample were 10 of the 50 firms that had received the most 8(a) business in fiscal year 1987 and for which we had a 5-year history of 8(a) and non-8(a) sales information. In analyzing the sales growth of these firms, we found that their average total sales increased from \$3.8 million to \$20.8 million during the 5-year period. Over 75 percent of that growth, however, came through 8(a) sales. Collectively, the 10 firms' dependency on 8(a) sales decreased from an average of 82.6 percent to 81.3 percent during the 5-year period. Further, individually six firms were more 8(a) dependent in their last year, while only four were less dependent. (Exhibit J)

The following examples show how two of the firms developed. The sales of one firm that had been in the program for about 9 years increased from \$5.1 million in fiscal year 1983 to \$52.1 million in fiscal year 1987. During the same period, the firm's 8(a) sales increased from about \$4.8 million to \$50.8 million; as of April 30, 1987, the 8(a) sales represented about 98 percent of the firm's total sales. This firm is scheduled to graduate from

the program in April 1988. The sales of another firm that had also been in the program about 9 years increased from \$13.4 million in fiscal year 1983 to \$47.3 million in fiscal year 1987. This firm's non-8(a) sales increased \$19.1 million and 8(a) sales increased \$14.8 million. In 1987 the firm's 8(a) sales were 53.8 percent of total sales. This firm is also scheduled to graduate in April 1988.

Mix of 8(a) awards

S. 1993 addresses a mix of 8(a) and non-8(a) patterns based on years of participation in the program and provides for competing 8(a) business to (1) guard against political influence, favoritism, and outright fraud that has haunted the program through award of larger 8(a) contracts and (2) encourage business development. Competition would be basically required on all awards over \$2 million. SBA data indicate that the \$2.0 million threshold requirement could significantly contribute to achieving the first objective but would have little impact on the second. Our analysis of 8(a) contracts³ awarded in fiscal years 1985 through 1987 showed that while between 49 and 60 percent of the 8(a) contract dollars were involved in contracts over the \$2.0 million threshold, only about 6 percent of the number of contracts awarded in 1985 and 1986 and less than 5 percent in 1987 exceeded the threshold.

If the threshold were to be set at \$1.0 million, the data show that between 9 and 12 percent of the contracts during fiscal years 1985 through 1987 would have been awarded competitively, thereby giving 8(a) firms more opportunity to compete. (See exhibit K for the number, value, and percent of awards made for the last 3 fiscal years at four different threshold levels--\$500,000, \$1.0 million, \$2.0 million, and \$5.0 million.)

³For the analysis, we used the basic contract award amount and assumed that later modifications could have been estimated at time of original award.

SBA'S MANAGEMENT

Our study also considered SBA's management of the 8(a) program. To help foster business ownership by socially and economically disadvantaged individuals and promote the competitive viability of their firms, SBA's procedures require each 8(a) firm to prepare a business plan that includes the objectives, goals, and projections of the firm. The plan helps identify the resources a firm needs to become a self-sustaining, profit-oriented small business. In addition, SBA district or regional management are required to conduct annually a thorough review and analysis of each firm to evaluate factors such as these: (1) its progress in achieving business development objectives, (2) its ability to compete in the marketplace, (3) its current financial condition, (4) its past performance on 8(a) contracts, and (5) its potential for success. SBA's management must also make sure that the firm continues to be owned, managed, and controlled by a socially and economically disadvantaged individual or individuals. In addition, the business opportunity specialist (BOS)—the SBA person that is responsible for providing management, marketing, technical, financial, and procurement assistance to the firm—is supposed to visit each firm annually. To further assist SBA in its oversight responsibilities, 8(a) firms are required to submit quarterly and annual financial statements. Audited annual statements are required if the firm's annual gross receipts were \$1.0 million or more.

File review

As mentioned earlier, we conducted a detailed file review of the 142 8(a) firms in our sample. Our work showed that for the last 5 fiscal years, the files do not contain evidence that all required annual reviews were made for 108 of the 142 firms, that all required site visits were made for 122 of the firms, and that

all required financial statements were received for 57 of the firms. We also observed instances of SBA accepting financial statements prepared by the owners rather than the required audited financial statements.

SBA district and regional officials acknowledged that all required annual reviews and site visits were not being made and some financial information was missing, but commented that the program had never been staffed adequately. In this regard, we concluded in our 1981 report that SBA did not have the staff to effectively manage the program. Since then, the number of 8(a) firms per BOS has increased from 17:1 ratio to a 26:1 ratio. At the district offices we visited, the ratio of 8(a) firms to BOSs ranged from 20:1 to 38:1. While S. 1993 would set a 20:1 ratio goal, SBA's Deputy Associate Administrator for Office of Minority Small Business and Capital Ownership Development told us that SBA would like to achieve a staffing ratio of 10 to 15 firms per BOS. In addition, the National Association of Public Administration's study stated that SBA has a need for better trained staff, as well as more staff.

Economic disadvantage criteria
needs clarification

Our study also looked at the issue of economic disadvantage. Public Law 95-507 limits the 8(a) program to firms owned and controlled by individuals who are both socially and economically disadvantaged. Although SBA's regulations define economically disadvantaged individuals and provide general criteria, SBA has basically considered anyone that is socially disadvantaged to be economically disadvantaged also. However, in its standard operating procedures, dated April 27, 1987, for the first time SBA set a personal net-worth threshold for determining "economically disadvantaged." These procedures state that "Generally, individuals having a net worth of less than \$750,000 will be

considered to be economically disadvantaged, absent a clear showing to the contrary." In commenting on H.R. 1807(a companion bill to S. 1993) SBA's Associate Deputy Administrator for Management and Administration, on September 29, 1987, stated that SBA believes that the \$750,000 figure should be lowered to \$250,000 to \$300,000, with a provision to deal with situations where assets warrant exception. SBA has not made a decision on this matter.

Our review showed that some owners of existing firms in our sample reported personal net worth that exceeded the \$750,000 threshold. None of these firms, however, was terminated. Notwithstanding this, one of the district offices we visited had recently considered two active 8(a) firms for termination because the owners were believed to be no longer economically disadvantaged. In one of the cases, the district director recommended the firm be terminated because the owner earned \$357,000 in one year and concluded that the owner's stated net worth of about \$475,000 was "grossly understated." The district director later changed his position and recommended continuation of this firm until the expiration of its fixed program participation term. He said that he could find no objective criteria nor precedent for determining "economic disadvantage" and believed that a finding of economic disadvantage would not withstand challenge on appeal by the 8(a) firm. The Deputy Associate Administrator for the Office of Minority Small Business and Capital Ownership Development said that no firms have been terminated because its owner was no longer economically disadvantaged since the establishment of fixed program participation terms in 1982.

Because the law requires that the program be directed to both socially and economically disadvantaged individuals, the uncertainty of what is meant by economically disadvantaged and what actions SBA should take under the circumstances needs to be clarified.

Practice of awarding contracts with options to
graduating firms needs clarification

Finally, on the basis of our study, we believe that SBA's practice of awarding contracts with options needs clarification. SBA will award contracts with renewable options to an 8(a) firm up to and including its last day in the program. This practice can result in the removal of future contracts for goods or services from the 8(a) program for several years if the government chooses to exercise the contracting options, and could adversely impact the developmental needs of other firms in the program with the same or similar types of business. Of the 142 firms in our sample, 23 graduated between August 1986 and December 1987. Of these, six firms received one or more contracts during the firms' last month in the program. One nonprofessional service firm, for example, was awarded 13 contracts during its last month in the program, of which 7 were dated on the firm's last day in the program. At least 12 of the contracts included options ranging from 1 to 4 years. The other contract may have had options, but SBA could not locate the contract file. Including the value of the options, the aggregate dollar amount of the 13 contracts is at least \$4.3 million, which was about equal to the value of all contracts and modifications received by the firm during the period October 1981 to August 1987.

We recognize that many of the graduating firms are highly dependent on 8(a) sales and if they were denied 8(a) business they could have a more difficult time competing outside the protection of the 8(a) program. However, if firms are encouraged to develop their non-8(a) business as they move through the program as proposed by S. 1993, then changing the policy so that contracts are awarded without options to graduating firms may not be as detrimental to their business.

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In summary, the General Accounting Office is in agreement with the changes proposed to strengthen the 8(a) program. Based on our work to date for the House Committee on Government Operations, we believe that the combined effect of the proposed legislative changes encouraging 8(a) firms to develop their non-8(a) business as they progress in the 8(a) program should result in a wider distribution of the 8(a) business among the participants and better prepare them to make the transition into the mainstream.

Mr. Chairman, this concludes my prepared statement. I will be happy to respond to any questions.

EXHIBIT A

EXHIBIT A

GAO REVIEWS OF SBA'S 8(a) PROGRAM
SHOWS THAT PROGRAM HAS NOT CHANGED MUCH

1981Current

About 31 percent of 8(a) business
 went to 50 firms

About 35 percent of 8(a) business
 went to 50 firms

Very few firms were graduating

Many older firms have graduated as a
 result of P.L. 96-481, enacted
 10/2/80--72 percent of active firms
 have been in program 5 years or less

Did not develop
 self-sufficient businesses

Same

EXHIBIT B

EXHIBIT B

8(a) AND OTHER MINORITY AND DISADVANTAGED PROCUREMENTS
COMPARED WITH TOTAL FEDERAL PROCUREMENT,^a 1982-1987

<u>Fiscal year</u>	<u>Federal procurements</u>	<u>8(a) procurements</u>		<u>Total minority and disadvantaged procurements^b</u>	
		<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>
		(dollars in thousands)			
1982	\$146,890,231	\$1,663,087	1.13	\$2,729,452	1.86
1983	152,335,866	1,760,955	1.16	3,085,967	2.03
1984	166,822,128	2,592,981	1.55	4,141,573	2.48
1985	182,603,556	2,535,270	1.39	3,718,333	2.04
1986	182,558,799	3,004,006	1.65	4,417,144	2.42
1987	178,514,854	3,115,433	1.75	4,786,978	2.68

^aDoes not include smaller contract actions, which beginning in 1986 was \$25,000 or less for all agencies.

^bIncludes 8(a) procurements.

Source: Federal Procurement Data System, Standard Report

EXHIBIT C

EXHIBIT C

OWNERSHIP OF 8(a) FIRMS BY MINORITY GROUP

<u>Minority group</u>	<u>1982</u>		<u>1987</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Black	1,426	61.6	1,498	51.0
Spanish American	480	20.7	671	22.8
Asian	179	7.7	396	13.5
American Indian	127	5.5	214	7.3
Puerto Rican	44	1.9	103	3.5
Other	60	2.6	56	1.9
Total	<u>2,316</u>	100.0	<u>2,938</u>	100.0

Source: SBA Financial Information System

EXHIBIT D

EXHIBIT D

COMPARISON OF ACTIVE 8(a) FIRMS BY TYPE OF BUSINESS

	<u>1982</u>		<u>1987</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Professional service	612	26.4	1,004	34.2
Construction	833	36.0	965	32.8
Nonprofessional service	548	23.7	501	17.1
Manufacturing	273	11.8	449	15.3
Concessions	<u>50</u>	2.2	<u>19</u>	0.6
Total	<u>2,316</u>	100.0	<u>2,938</u>	100.0

Source: SBA Financial Information System

EXHIBIT E

EXHIBIT E

GEOGRAPHICAL DISPERSION OF 8(a) FIRMS
AND CONTRACT AMOUNTS IN FISCAL YEAR 1987



EXHIBIT F

EXHIBIT F

ACTIVE 8(a) FIRMS AND VOLUME OF CONTRACT ACTIVITY
BY SBA DISTRICT AND REGIONAL OFFICE

<u>Region/District</u>	<u>Number of active firms, 09/30/87</u>	<u>Contract activity FY 1987</u>
Region I		
Boston Regional Office (RO)	76	\$ 86.6
Hartford District Office (DO)	<u>32</u>	<u>20.2</u>
Total Region I	108	106.8
Region II		
New York DO	89	32.1
Syracuse DO	36	23.5
Puerto Rico and Virgin Island DO	56	13.0
Buffalo DO	9	.6
Newark DO	<u>88</u>	<u>112.5</u>
Total Region II	278	181.7
Region III		
Philadelphia DO	77	69.8
Richmond DO	93	145.7
Washington DO	400	552.2
Pittsburgh DO	27	7.2
Baltimore DO	71	88.4
Clarksburg DO	<u>13</u>	<u>47.5</u>
Total Region III	681	910.8
Region IV		
Atlanta RO	2	18.0
Atlanta DO	92	53.3
Miami DO	37	20.0
Louisville DO	22	3.1
Birmingham DO	49	112.7
Charlotte DO	46	28.7
Columbia DO	35	18.0
Jackson DO	30	17.2
Nashville DO	37	34.5
Jacksonville DO	<u>26</u>	<u>32.1</u>
Total Region IV	376	337.6

EXHIBIT F

EXHIBIT F

<u>Region/District</u>	<u>Number of active firms, 09/30/87</u>	<u>Contract activity FY 1987</u>
Region V		
Chicago DO	80	129.6
Minneapolis DO	30	.8
Detroit DO	39	6.1
Milwaukee DO	15	5.2
Cleveland DO	43	47.4
Indianapolis DO	22	13.5
Columbus DO	<u>57</u>	<u>84.1</u>
Total Region V	286	286.7
Region VI		
Dallas DO	25	20.8
Corpus Christi Branch Office BO	16	8.2
Lower Rio Grande Valley DO	20	.4
Little Rock DO	40	20.7
Houston DO	30	8.8
El Paso DO	25	24.1
Lubbock DO	7	.1
New Orleans DO	48	44.5
Oklahoma City DO	36	36.7
San Antonio DO	71	86.3
Albuquerque DO	<u>63</u>	<u>61.8</u>
Total Region VI	381	312.4
Region VII		
Kansas City DO	46	51.8
Cedar Rapids DO	2	.2
Des Moines DO	6	2.7
Omaha DO	11	4.5
Wichita DO	23	9.5
St. Louis DO	<u>39</u>	<u>11.9</u>
Total Region VII	127	80.6

EXHIBIT F

EXHIBIT F

<u>Region/District</u>	<u>Number of active firms, 09/30/87</u>	<u>Contract activity FY 1987</u>
Region VIII		
Denver RO	1	.5
Denver DO	71	129.9
Fargo DO	7	18.5
Sioux Falls DO	16	9.8
Salt Lake City DO	36	24.8
Helena DO	14	3.7
Casper DO	<u>1</u>	<u>.2</u>
Total Region VIII	146	187.4
Region IX		
San Francisco DO	121	100.8
Los Angeles DO	113	211.8
Santa Ana BO	18	45.9
Fresno DO	20	10.5
Las Vegas DO	15	9.2
Honolulu DO	24	10.1
San Diego DO	44	70.9
Phoenix DO	<u>39</u>	<u>56.6</u>
Total Region IX	394	515.8
Region X		
Seattle DO	78	31.6
Anchorage DO	13	15.9
Portland DO	47	25.2
Boise DO	5	3.2
Spokane DO	<u>18</u>	<u>18.5</u>
Total Region X	161	94.4
Grand total	<u>2,938</u>	<u>\$3,014.2</u>

Source: SBA Financial Information System

EXHIBIT G

EXHIBIT G

TOP 50 8(a) FIRMS HAD OVER 35 PERCENT
OF CONTRACT AMOUNT IN FISCAL YEAR 1987

	<u>NUMBER OF FIRMS</u>	<u>CONTRACT AMOUNT</u>	<u>PERCENT OF 8(a) CONTRACT AMOUNT</u>
Business class			
Professional service	29	\$ 686,610,946	22.8
Manufacturing	9	197,383,227	6.5
Construction	9	124,556,590	4.1
Nonprofessional service	<u>3</u>	<u>53,687,841</u>	<u>1.8</u>
Total	50	<u>\$1,062,238,604</u>	35.2
Minority class			
Black	19	\$ 429,548,084	14.3
Spanish American	19	416,919,461	13.8
Asian	8	126,576,931	4.2
American Indian	<u>4</u>	<u>89,194,128</u>	<u>2.9</u>
Total	50	<u>\$1,062,238,604</u>	35.2

Source: SBA Financial Information System

EXHIBIT H

EXHIBIT H

TOP 50 FIRMS IN 8(a)
CONTRACT ACTIVITY IN FISCAL YEAR 1987

<u>Firm</u>	<u>Amount of contract awards</u>	<u>Business class</u>	<u>Minority class</u>	<u>SBA district office</u>
1	\$ 76,625,954	D	3	Birmingham
2	69,219,027	D	0	Richmond
3	42,132,927	D	3	Denver
4	41,220,366	A	0	Newark
5	41,011,309	D	2	Clarksburg
6	36,845,784	D	0	Philadelphia
7	36,590,057	A	0	Chicago
8	31,261,920	D	0	Washington
9	27,182,251	D	0	Los Angeles
10	27,177,446	D	3	Los Angeles
11	26,376,895	E	3	Phoenix
12	25,649,784	D	0	Washington
13	24,419,549	D	0	Washington
14	23,253,829	C	3	Los Angeles
15	23,229,314	D	4	Nashville
16	22,285,308	A	4	San Diego
17	21,043,631	A	2	San Antonio
18	20,519,137	C	3	Denver
19	19,921,117	A	3	San Antonio
20	18,856,467	A	0	Los Angeles
21	18,772,149	A	0	Jacksonville
22	18,196,358	D	0	Los Angeles
23	16,564,811	A	2	Albuquerque
24	16,448,971	D	3	Los Angeles
25	16,324,936	D	4	Columbus
26	15,592,348	D	3	Chicago
27	15,539,478	B	0	Baltimore
28	15,504,492	B	0	Cleveland
29	15,491,193	D	0	Washington
30	15,172,190	D	3	Denver
31	15,163,683	D	0	Washington
32	14,908,338	D	4	Washington
33	14,593,161	D	4	Columbus
34	13,584,421	D	3	Los Angeles
35	13,521,220	D	3	Richmond
36	12,646,229	D	4	Boston
37	12,325,548	D	0	Portland
38	12,200,849	B	3	San Diego
39	12,080,333	B	0	New Orleans
40	12,034,338	A	3	Hartford
41	11,913,261	A	0	Los Angeles
42	11,782,271	D	0	Los Angeles
43	11,581,726	D	4	Washington
44	11,098,871	D	2	Oklahoma City
45	11,037,649	B	0	Cleveland
46	11,007,919	D	4	Baltimore
47	10,614,851	B	0	Little Rock
48	10,612,048	B	3	Albuquerque
49	10,589,995	B	3	Denver
50	10,512,895	C	3	Dallas

Total \$1,062,238,604

Business class

A - Manufacturing
B - Construction
C - Nonprofessional service
D - Professional service

Minority class

0 - Black
2 - American Indian
3 - Spanish American
4 - Asian

Source: SBA Financial Information System

EXHIBIT I

EXHIBIT I

B(a) SALES EXPERIENCE OF FIRMS THAT HAVE BEEN IN PROGRAM

AT LEAST 7 YEARS

Firm	FPPT ^a date	Latest sales breakout			Latest B(a) sales dependency (percent)	Number of years in program
		Non-B(a)	B(a)	Total		
		(dollars)				
A	4/21/88	\$1,267,062	\$50,854,047	\$52,121,109	97.6	8
B	4/21/88	21,858,122	25,438,108	47,296,230	55.8	9
C	4/21/89	14,485,130	24,447,110	38,932,240	62.8	8
D	4/19/89	8,319,863	9,171,962	17,491,825	52.4	8
E	10/21/87	605,922	11,512,514	12,118,436	95.0	17
F	3/22/88	58,709	9,392,456	9,451,165	99.4	11
G	4/15/89	749,298	8,543,229	9,292,527	91.9	12
H	10/5/87	1,316,120	7,616,312	8,932,432	85.3	10
I	3/24/89	170,023	7,647,749	7,817,772	97.8	9
J	10/21/88	1,233,658	6,477,688	7,711,346	84.0	8
K	3/24/87	81,042	6,715,576	6,796,618	98.8	10
L	4/8/88	2,382,339	3,707,205	5,707,205	100.0	10
M	10/14/88	219,292	3,175,188	3,394,480	57.1	12
N	10/24/88	456,329	3,105,022	3,561,351	95.9	9
O	4/2/89	1,403,183	4,556,791	5,959,974	90.9	9
P	4/21/88	17,136	2,579,379	2,596,515	64.8	13
Q	4/14/88	385,600	3,555,475	3,941,075	99.5	9
R	10/21/87	142,793	2,623,050	2,765,843	87.2	12
S	4/2/88	474,408	2,600,187	3,074,595	94.8	11
T	10/21/88	625,530	1,588,723	2,214,253	77.0	10
U	4/21/89	309,026	390,506	699,532	38.4	8
V	4/21/89	347,623	543,156	890,779	63.7	13
W	4/16/87	80,408	256,023	336,431	42.4	10
X	4/7/88	55,423	339,906	395,329	80.9	16
Y	4/21/88	38,959	188,087	227,046	77.2	14
Z	4/16/89	7,559	196,975	204,534	85.5	12
AA			15,465	15,465	67.2	7
Average - 27		2,114,465	7,453,254	9,567,719	79.2	10.6
AB	4/14/89	11,928,628	1,608,449	13,537,077	11.9	8
AC	9/30/86	756,628	130,507	887,135	14.7	13
AD	4/15/89	479,146	0	479,146	0.0	9
AE	4/15/88	233,507	65,196	298,703	21.8	13
AF	4/14/88	280,528	17,016	297,544	5.7	11
AG	4/15/88	193,883	25,527	219,410	11.6	15
AH	9/24/86	161,102	32,433	193,535	16.8	14
AI	9/30/86	84,341	22,185	106,526	20.8	12
Average - 8		1,764,720	237,664	2,002,385	12.9	11.9
OVERALL AVERAGE		\$2,034,523	\$5,803,976	\$7,838,499	64.1	10.9

^aFixed program participation term

EXHIBIT J

EXHIBIT J

TEN OF THE TOP 50 FIRMS IN TERMS OF 1987 CONTRACT AWARDS

Firm	Sales beginning of 5 years*			Sales end of 5 years*			Business class	FFPT* date	Years in operation
	8(a)	Total	Dependency	8(a)	Total	Dependency			
	----- (dollars) -----		(percent)	----- (dollars) -----		(percent)			
A	4,775,000	5,104,000	93.5	50,894,000	52,121,000	97.6	D*	4-21-88	8
B	10,617,000	13,789,000	79.2	25,428,000	47,296,000	53.8	D	4-21-89	9
C	2,078,000	4,122,000	50.4	15,451,000	19,845,000	77.9	D	4-16-89	7
D	302,000	305,000	99.0	17,059,000	19,535,000	86.9	D	4-21-89	7
E	3,015,000	3,101,000	95.4	9,172,000	17,492,000	52.4	D	4-21-89	6
F	2,675,000	3,690,000	72.5	13,279,000	16,376,000	81.1	D	4-2-88	7
G	705,000	705,000	100.0	9,534,000	13,677,000	69.7	D	3-31-88	7
H	2,306,000	3,292,000	69.9	9,392,000	9,451,000	99.4	C*	3-22-88	11
I	3,466,000	3,492,000	97.5	6,716,000	6,797,000	98.8	D	3-24-87	10
J	689,000	1,006,000	68.5	5,105,000	5,324,000	95.9	D	10-14-88	9
Total	29,560,000	38,277,000	75.8	162,000,000	208,014,000	77.9			
Average	3,056,000	3,827,700	82.6	16,200,000	20,801,400	81.3			

*Dollars rounded to nearest thousand.

*Fixed program participation term

*Professional service

*Nonprofessional service

EXHIBIT K

EXHIBIT K

SCHEDULE OF THRESHOLD LEVELS FOR CONTRACTS
AND RELATED MODIFICATIONS AWARDED

<u>Awards</u>	<u>By Number of Awards</u>					
	<u>1985</u>		<u>1986</u>		<u>1987</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Total Awards	5,225	100.0	4,498	100.0	4,227	100.0
\$ 500,000 and over	972	18.6	893	19.9	696	16.5
\$1,000,000 and over	555	10.6	526	11.7	369	8.7
\$2,000,000 and over	302	5.8	280	6.2	187	4.4
\$5,000,000 and over	86	1.6	93	2.1	32	.8

<u>Awards</u>	<u>By Value of Awards</u>					
	<u>1985</u>		<u>1986</u>		<u>1987</u>	
	<u>Value</u>	<u>Percent</u>	<u>Value</u> (dollars in thousands)	<u>Percent</u>	<u>Value</u>	<u>Percent</u>
Total Awards	\$2,823,991	100.0	\$2,623,992	100.0	\$1,773,772	100.0
\$ 500,000 and over	2,317,555	82.1	2,200,666	83.9	1,367,141	77.1
\$1,000,000 and over	2,020,522	71.6	1,935,578	73.8	1,135,233	64.0
\$2,000,000 and over	1,665,459	59.0	1,581,772	60.3	868,926	49.0
\$5,000,000 and over	1,032,137	36.6	995,333	37.9	382,688	21.6

Source: SBA Financial Information System

(077064)

The CHAIRMAN. Mr. Luke, that's a very fine statement. I read the statement last night, and as I read it, a lot of questions came to my mind, most of which have been answered today.

But I must say that your findings about the number of BOS visits, about how these contracts are awarded, and the fact that audits are not really annually made as they ought to be, and that SBA accepts owner-prepared financial statements rather than certified audits—as I say, in this bill—I'm reluctant to say this, but I want the bill to tie SBA down. You can't take away all flexibility and discretion and have a successful program. But it seems to me that in almost every instance where they have flexibility, they abuse it.

Hubert Humphrey used to say no matter how well-designed a program may be—and of course, he was a great devotee and committed to social programs to help poor people and socially disadvantaged—there isn't any program some bureaucrat can't ruin. One of the reasons for Ronald Reagan's success is because the bureaucrats took good programs and messed them up.

In any event, I'm going to do my very best to get a bill here which really tightens down the discretion of SBA. I'm not going to try to take it all away, but it's obvious, as I read the statistics here—I tell you if I were in the 8(a) Program, I would want to hasten to graduation if I was going to get 12 contracts my last month in the program. What a hell of a deal.

Well, I won't burden you with any further questions, Mr. Luke. We may ask for additional questions. We may have some that we will submit to you in writing. I appreciate you, Mr. Hart, and Mr. Elmore coming over. Your charts and graphs were extremely poignant and persuasive and helpful to the Committee. Thank you very much.

Mr. LUKE. Thank you, Mr. Chairman. If we can be of any further assistance, please call.

The CHAIRMAN. Thank you.

Our next witness is Michael Gooden, president and chairman, Integrated Systems Analysts. Mr. Gooden, I was trying to recall last night as I went through my briefing book whether we had met before or not. I am about to conclude we haven't. There is a national association of minority utility executives, and I was speaking to them in Washington about a year ago. They gave out three or four awards, and I was thinking you were one of the persons awarded. Does that ring a bell with you?

Mr. GOODEN. No, sir, it wasn't.

The CHAIRMAN. You didn't get the award, so we haven't met before.

Mr. GOODEN. Yes, sir. That's correct.

The CHAIRMAN. Please proceed, Mr. Gooden.

STATEMENT OF C. MICHAEL GOODEN, PRESIDENT AND CHAIRMAN, INTEGRATED SYSTEMS ANALYSTS, INC., ARLINGTON, VA, ACCOMPANIED BY WELDON LATHAM, ESQ., REED, SMITH, SHAW & McCLAY, McLEAN, VA

Mr. GOODEN. Chairman Bumpers, I am really honored to have the opportunity to speak to you today. I have had the pleasure of

working with your very fine staff and also with the staff of Senator Weicker over the last several months addressing minority legislation. I would have to say that the talent of your staff are just tremendous in terms of what they are trying to do on behalf of minority small business in that community. I think that the S. 1993 bill reflects a tremendous amount of effort and comprehension of the problems that exist in the minority business community.

I do want to offer some comments on the bill based upon the background that I have had with an 8(a) firm. So that you have a better appreciation of my perspective, I would like to give you a thumbnail sketch of Integrated Systems Analysts. ISA 6½ years old. It started its operations in July 1981. I am the principal owner of the company. It is an engineering firm whose principal customer is the U.S. Navy. During this current fiscal year, the company will gross about \$45 million in revenue. It is approaching 700 employees in offices throughout the country.

The company participated in the 8(a) Program for 5 years. I did leave the program, as I indicate in my formal testimony, without regret in November 1987.

We are currently performing on 63 contracts from 10 locations throughout the country. We enjoy a good reputation for performance with the U.S. Navy, our principal customer.

I would not have been able to accomplish this without the benefit of the SBA 8(a) Program. I think that the 8(a) Program is a fine program, and that the efforts to reform the program rather than to demolish it are in the best interests of the economics of this Nation. I feel very strongly that the minority communities need the 8(a) Program to be able to bring about some economic parity within those communities.

Approximately 2 years ago I submitted a point paper to the SBA addressing my concerns about the 8(a) Program. You have to understand that at that point I was, in fact, a participant in the program. My concerns were centered around some of the arbitrary rules that existed in the program and the fact that there was very little incentive for minority firms participating in the program to develop their companies in a non-8(a) marketplace. I, in fact, coined a rule which I called the 11-12-13-14 Rule, which was processed through several echelons of the SBA. I also talked to your staff members about that rule approximately 7 months ago regarding some of the legislative changes which were being considered for the program.

What I hoped to achieve, was to see the 8(a) Program adopt a concept which would incentivize firms to move away from heavy reliance on the 8(a) Program by developing a competitive posture. I looked at that incentive in terms of allowing the company to grow in accordance with, its own capability to develop in the marketplace, given that the growth could be achieved by the company, and that the company was removing itself from reliance on the SBA at some controlled pace over the fixed program participation term. The intent was that by the end of that term the firm would be obtaining at least 50 percent of its work outside of the 8(a) Program. I felt that it would lead to a lot more viable firms participating in the program. I was extremely concerned with the high failure rate that I had observed within the minority businesses that

had participated in the program. I felt that it was fundamental to the survival of the firms in the free marketplace.

In looking at S. 1993, I think that the bill embraces many of the concepts that I had proposed to the SBA and also to both the House Small Business staffs and your own representatives in my discussions. There are some fundamental exceptions that I would like to address because I feel that some of these issues would strengthen the bill.

First, I sat here in awe today listening to the testimony dealing with the SBA distribution of contracts to a chosen few companies. Mr. Chairman, I would have to tell you that that is a misconception. In the first place, if it were not for the efforts of the companies going into the procuring activities and rooting out the opportunities, the SBA would have no opportunity to award to the company. The SBA has functioned more as a conduit to process the contracts in accordance with regulations than for business identification, or creating the opportunities for the minority businesses. Over the 5 years that I participated in the 8(a) Program, I never once received a call from the SBA saying that they had an opportunity that they were considering for ISA.

In looking at this, I think that there is a very germane issue. Part of your viability in the marketplace is your ability to go into that marketplace, to understand and have the wherewithal to address the customer requirements in terms of your capabilities to meet those requirements and to get the customer to the point where he or she is willing to consider your company as a candidate for the work. In other words, it's that marketing approach that the entrepreneur has to learn in developing his competitive viability.

What you are seeing manifested in numbers such as were presented by Mr. Luke, from the GAO, is that there are companies who are aggressively pursuing the marketplace, and as a result of their pursuit, they are getting the opportunities because the customers are willing to release those opportunities to the SBA for subsequent award to that company.

Now, I realize we are talking about a business development program. ISA was three people in 1981. As I told you earlier, it is approaching 700 people today. Over that span of time, it was through going out to pursue the market that I was able to develop the company to the point where it now is able to compete in the marketplace.

So, in looking at the SBA, and the distribution of contracts, I think we have to keep in mind that part of the business development has to be getting the company to a point where it can go out and address its marketplace. To attract the opportunities to have the opportunity to bid for them.

The next point that I would make, sir, is dealing with the business mix. As I indicated earlier, I am very pro companies reducing their reliance on the 8(a) Program. As a matter of fact, I personally feel that it is imperative that this happen over a company's tenure in the 8(a) Program.

Unfortunately—and I have addressed this previously—the way that you have proposed the reduction in the percentages over the years becomes extremely harsh in the out-year percentage requirements. Many of the contracts in the Federal marketplace are mul-

tiple-year contracts. And you build up a bow wave of contracts in terms of your contract backlog. When you look at the 6th year in your program where you require 55 percent of total sales outside of the 8(a) Program, it would be extremely harsh for a company to go from 70 percent to that 55 percent between the 5th and 6th year. If the company had been in 100 percent compliance up through its 6th year, your 25 percent requirement in the final year is almost impossible.

I have asked that these percentages be readdressed in terms of the realism of being able to achieve these numbers in that they are based upon aggregate 8(a) sales to total sales. If such percentages are imposed, I would submit that they should be based upon the company's new sales as assessed on an annual basis. You would then consider the proportion of new sales that the company was projecting for each year and base the percentage of 8(a) to non-8(a) work on the new sales rather than the aggregate sales.

The third point that I would make—and I believe that someone mentioned this earlier—is limiting the size of an award. 150 percent of the prior contract award is an arbitrary figure. I can conceive of no business basis for that number. I would only say to you that it could be extremely detrimental, particularly to a developing firm. Many contracts start off at \$10,000. If you look at 150 percent of that, if that were the largest contract, you are talking about limiting the next contract to \$25,000. You already imposed the \$2 million threshold, and the \$1 million threshold, and those are restrictive in themselves. To couple that with the 150 percent of prior contract limit, I think is very detrimental and particularly in the early stages of development of a company. I would recommend deleting that provision entirely.

Looking at your provision dealing with full and open competition opportunities after graduation, I would begin by saying that it is one of the few transitional elements that is addressed in the bill. If the bill has a shortfall, I believe that the shortfall is in dealing with the transition of firms from the program. If we look at the fact that this legislation might become fiscal year 1988 legislation, and we look downstream as to where the legislation would really start to take impact in terms of the competitiveness of the firms 4 years into the new legislation, we are talking a vast period of time in which many companies are going to come out of the 8(a) Program. Many of those companies are going to come out of the program ill-prepared to compete in the marketplace.

There is currently very little, if any, transitional character to the program. It is one of the real problems. If the company uses the program successfully over its tenure, it will have achieved the size standard by the time it leaves the program. It should be an objective of the company. When the company comes out, if it has achieved the size standard, it is no longer eligible for small business set-aside contracts or small disadvantaged business contracts in competition. But rather, the company must compete against the giants of the industry. In the defense industry, for example, I now compete against General Dynamics, Raytheon and all of the other companies that are major defense contractors.

This specific element of the bill that I'm talking about is on page 35 where you address the permission to take an opportunity out of

the 8(a) Program. You use the word "may" take it out of the program, and I would submit that the word should be "shall," because I believe that given that the company successfully uses the program to develop the market niche, the only opportunity that the company has to survive is to be able to compete for the work beyond the program. I would ask you to consider this point in reconsidering the bill.

The contract performance requirements after graduation I thought were extremely harsh. The intent of the S. 1993 legislation is to get the company to a point where it can be mainstreamed. I feel that the bill goes a long way toward doing that. Having mainstreamed that company, I got the impression from the bill that the company would be on its own to be able to compete in its marketplace, to work in its marketplace and survive in its marketplace. Because the Federal Government marketplace is a very low profit marketplace, developing the capital of a company over a short period of time is a very difficult undertaking. The company may well be in a position to have to take means, that is, the sale of stock to be able to capitalize the future growth and development.

I would also submit, Mr. Chairman, that this is the only legislation where we are helping a small business or a protected industry where we impose such restrictive legislation. I would strongly recommend that this contract performance requirement be limited to the firm's participation within the 8(a) Program, and that we not hold the company a prisoner beyond that because of the support that is given the company during its development stage.

The next two comments that I have address briefly two issues of extreme concern with respect to P.L. 99-661, the section 1207 legislation. I address these because I believe that there is a relationship between this legislation and the S. 1993 legislation.

The first concern deals with the fact that I believe that this is an open opportunity to take dollars that were earmarked by the Congress to go to the minority business community and to put those dollars in nonminority firms through the subcontracting provision. I am very familiar with section 921. I think that the 50 percent subcontracting limitation should be readdressed and that we should take a look at it from a standpoint of the company performing 75 percent of the requirements.

In the small business community, which I have been very successful in, competed very vigorously in, I have seen that the community is controlled by large business. It is done through subcontracting, and we have created the same opportunity in this legislation with respect to minority businesses. I think that you will find that large majority-owned businesses will be steering the direction of the procurements, and they'll be steering it because of the allowances for subcontracting.

Another aspect of this provision is there is very little mentoring for minority businesses which are trying to develop this marketplace, the Federal marketplace. I would propose that by allowing a relaxation of the subcontracting requirements, if the small disadvantaged business were working with other minority businesses, that we could foster some mentoring for small disadvantaged businesses in the marketplace, and address some of the transitional elements that I was referring to earlier.

The last thing that I will mention is the size standard issue. I would simply say that I find it fascinating that small business provides about 42 to 43 percent of the employment in this country, and we could restrict our SICs to 30 percent as the SBA has recently done. I truly believe that the size standard should be going in the opposite direction. I find it difficult to believe that I with a 700 person company have to compete with a multibillion dollar company such as General Dynamics who has a tremendous opportunity for sole-source because of the sheer nature of the business. The current SBA regulation would trigger a reduction of the size standards whenever a small business is performing more than 30 percent of the procurement within a specific SIC. I think this is absolutely a step in the wrong direction with respect to protecting the small businesses that are feeding this Nation.

Mr. Chairman, I would like my representative Weldon Latham from Reed, Smith, Shaw and McClay to address two specific issues with respect to the legislation.

[The prepared statement of Mr. Gooden follows:]

Testimony on S1993 Before the Committee on Small Business United States Senate, Washington, D.C. on Thursday, February 18, 1988

Submitted by: C. Michael Gooden,
President and Chairman
Integrated Systems Analysts, Inc.

Chairman Bumpers, Senator Weicker and Members of the Committee, I am honored to appear before you - I have had the pleasure of working with your staffs regarding minority business legislations and I would like to commend you on your selections of such talented and dedicated teams of individuals, and the results of their collective efforts as embodied in Senate Bill 1993.

I am here today to offer a few brief comments, which I believe would further strengthen this legislation if they were incorporated.

So that you have a better appreciation of my perspective, I would like to give you a thumbnail sketch of Integrated Systems Analysts, Inc. ISA is six and half years old having started operations in July of 1981. The company is a minority owned and controlled engineering firm supporting almost exclusively the U.S. Navy. The firm will operate at approximately \$45M in revenue this fiscal year and is approaching 700 employees. The company participated in the 8(a) program from November 1982 through November 1987 and graduated from the program, without regret. ISA is currently performing on 63 contracts from 10 locations throughout the country and enjoys a very credible reputation with its primary customer, the U.S. Navy.

I would not have been able to accomplish this without the assistance of the SBA Section 8(a) program. While I am in complete agreement that necessary change to the program is warranted, I am also firmly convinced that such a program is needed to bring about some economic parity to our nations minority communities.

Approximately two years ago, and while a participant in the 8(a) program, I presented a concept and a point paper to the SBA addressing the need for the program to provide incentives for the 8(a) participant to develop a non 8(a) posture for the business, while allowing the firm to develop at its own rate of growth. I gave a similar presentation to your staff persons last summer. With few exceptions your bill embraces these same concepts.

I would like to address the areas where I feel that it falls short, and to expand that area slightly by addressing related issues involving Section 1207 of PL99-661.

Summary of Comments: Senate Bill S1993

- I, generally, believe this is a very comprehensive and well thought out approach to restructuring the 8(a) program in a constructive manner. I applaud the efforts of the Senate Small Business Committee to incentivize program participants toward building more viable businesses through development of their companies in the non-8(a) marketplace.

1) SBA Contract Support

Page 3 line 6 subpara (6); There is an obvious misconception regarding contract support. Unfortunately, agencies are not providing any measurable quantity of contracts to the SBA, which the SBA is in turn awarding to their favorite companies. The primary way that procurements are obtained for award to the SBA is through the marketing efforts of the individual firms resulting in the agencies agreement to go 8(a), or the firms request that the SBA submit a "Search Letter" (frequently prepared by the firm) to the agency requesting consideration for an 8(a) set-aside on the firm's behalf.

2) Development of Business Mix Emphasizing Competitive Contract Awards

Page 26, Section 401; In that the percentages cited in (I) through (IV) are aggregate 8(a) sales to total sales dollar amounts, the percentage at the completion of the 6th year, 55%, would be extremely limiting on the company. The 25% at the completion of the 7th year would be almost impossible to achieve even if the company had been in full compliance prior to the 7th year.

Recommend that these percentages pertain to new sales determined by an annual submission of the SBA Form 1010C, Business Plan. The sales figure would be negotiated between the Program Participant and his/her Business Opportunity Specialist each year. Having agreed to a level of new sales, the participant would then commit to the percentages specified in terms of 8(a) versus non-8(a) sales. If the Participant does not achieve the non-8(a) portion, the New Sales would not be permitted to increase in the succeeding year, and new 8(a) contract awards would not be authorized until satisfactory progress (5% of the specified percentage) has been obtained.

- 3) Limiting the Size of Award
 Page 32, line 19, item (D)(1); Limiting the size of an award on a noncompetitive basis to 150% of the total contract price previously paid to a firm for its largest contract is arbitrary and detrimental, particularly to a start up or small firm. With the limitations beyond which the contract must be competed anyway, this serves no useful purpose other than to so control the growth that the companies may never get a reasonable start. In part, it would appear that the objective of the program is to get firms to the level where they can compete. This limitation, without any apparent basis, frustrates that objective.

I recommend deleting this provision in its entirety.

- 4) Full and Open Competition Opportunity After Graduation
 Page 35, item (F), line 8; Would recommend changing the word "may" to "shall". Given that a company successfully uses the 8(a) program to develop a market niche, in all likelihood, the company will exceed the size standard for the industry by the end of the participation term. The only chance that the company has beyond the 8(a) program is to have the opportunity to compete for the follow on work in that area. There is more than ample new 8(a) work by simply breaking out 8(a) efforts from large multidiscipline contracts, as well as by bringing new efforts, where appropriate, into the 8(a) program. Further, having the opportunity to compete for the work beyond the 8(a) program will incentivize better performance and cost control by the participant in the hopes of winning the follow on efforts.

There is little incentive by the procuring agency to remove work from the 8(a) program, as once in, it helps them achieve their goals relatively effortlessly.

This is one of the few transition areas which is critical to the success of the 8(a) participants after completion of the program participation term.

- 5) Contract Performance Requirements After Graduation
 Page 36, line 21 item (20) (A); The requirement that the 8(a) firm must perform the contracts including all options through the life of a contract, whether or not the firm is a Program Participant, is extremely harsh in terms of the loss of flexibility which it imposes upon the owner(s) of an 8(a) firm. This legislation further appears to single out the socially and economically disadvantaged firms for such treatment. It does appear that this requirement is appropriate during a firm's tenure as a Program Participant. Beyond that participation period, the firm is expected to perform on its own merit, and should be afforded the same opportunity to make the necessary management decisions necessary to meet its financial and capital obligations, as would any other company.

None of the other set-aside and protected procurement programs, the Small Business Set-Aside Program as set forth under 15 USC being the most prominent of these, attempt to enslave the companies in such a manner for the assistance and opportunities which they were afforded under the statutes. There are sound business and economic reasons for this. This requirement would so handicap a firm as to make it unattractive to financial institutions as the firm loses the ability to control its economic future. If the owners had to raise capital to preserve the health of the company, they stand to lose their contract base and to be faced with stiff penalties.

I strongly recommend that this contract performance requirement be limited to the firms period of participation in the 8(a) program.

ISSUES REGARDING

SECTION 1207

PL99-661

LIMITATIONS ON SUBCONTRACTING

To assure the accomplishment of the purposes of Public Law ("P.L.") 99-661, Section 1207, and to prevent the diversion of funds intended for the disadvantaged business community into non-disadvantaged companies, there must be limitations on the extent to which Small Disadvantaged Businesses ("SDBs") may subcontract work awarded under the Section 1207 Program to non-disadvantaged businesses.

Similar limitations on subcontracting Small Business Administration ("SBA") Section 8(a) contracts are stated in P.L. 99-661, Section 921(c), and 13 C.F.R. §124.302(b). As the Section 8(a) program and the Section 1207 program have similar purposes, similar subcontracting limitations are appropriate. The attached regulation provides for such limitations, and parallels the language of 13 C.F.R. Part 124.302(b).

So as not to put the SDB prime contractor at a disadvantage (because it may seek only limited subcontracting assistance from large majority-owned companies), this regulation would not limit the extent to which the SDB prime contractor can seek subcontracting assistance from other disadvantaged businesses as defined in SBA regulation 13 C.F.R. Part 124.105, without limitation as to the size of the subcontractor. This would also facilitate the use of "other than small" disadvantaged businesses by the Department of Defense ("DoD"). Ranking DoD officials familiar with DoD's efforts to increase contracting opportunities for disadvantaged businesses have openly stated that it is highly unlikely that DoD will fulfill the Congressionally mandated five percent (5%) goal because "there are not enough small disadvantaged businesses to adequately perform the work." This regulation would help to facilitate teams of small and "other than small" disadvantaged businesses, which will increase the pool of available companies that can assist in meeting the five percent (5%) goal. It would also assist in creating a transitional environment for companies that have grown out of the Section 8(a) Program, which the Senate Committee on Small Business has stated is needed in its recent report entitled "Survey of the Graduates of the Small Business Administration Section 8(a) Minority Business Development Program." S. Rep. No. 29, 100th Cong., 1st Sess. 7 (1987). Finally, it would promote cooperative efforts between firms in the disadvantaged community.

LIMITATIONS ON SUBCONTRACTING

The Draft Final Regulations fail to place any limits on the degree of subcontracting which a SDB will be permitted to pursue under a SDB set-aside procurement. This creates the potential for a significant portion of the revenues earmarked for the minority community to end up in businesses of the majority community. This aspect of the implementation of Section 1207 could be substantially strengthened by severely curtailing the degree of subcontracting (less than 25%) for a SDB set-aside, unless the subcontract is to a qualified Minority Business Enterprise ("MBE"), in which case the degree of subcontracting permitted would be considerably more liberal. This approach would have the added benefit of promoting cooperative efforts of the firms in the minority community.¹

1. Attachment Three (3) to Secretary Taft's testimony, before this Panel, containing new interim regulations and proposed regulations, suggests that DoD is considering placing limitations on subcontracting; however, the threshold levels contained in Part 252.219-7007 fail to adequately address the problem.

I. REGULATORY LANGUAGE FOR LIMITATIONS ON SUBCONTRACTING

Add to Defense Federal Acquisition Regulation Supplement ("DFARS") §19.509:

Performance of work by the SDB concern.¹ To assure the accomplishment of the purposes of the program, and to prevent the diversion of funds intended for the SDB community into large majority-owned companies, each SDB shall be required to perform at least seventy-five percent (75%) of the total dollar amount of each subcontract, exclusive of material costs, with its own labor force, or with the assistance of another socially disadvantaged business.² The SDB concern is required to include in its proposal to perform a given contract a statement that it agrees to perform the required percentage of the work with its own labor force, or with the assistance of another socially disadvantaged business. Refusal of the concern to provide such a statement will result in the contract not being awarded.

1. Defined in Part 19.001 of the Draft Final Regulations presented by Deputy Secretary of Defense William H. Taft, VI to the House Armed Services Committee Acquisition Policy Panel on October 29, 1987 ("Draft Final Regulations").

2. Defined in Small Business Administration ("SBA") regulation 13 CFR Part 124.105.

SIZE STANDARD IMPACT

The DoD implementation of Section 1207, P199-661 defines SDB's by referencing Section 3(a) of 15 U.S.C. This section invokes the size standards as established for each industry by the SBA. The dollar volume of revenue represented by the DoD 5% goal, if achieved, would quadruple the current level of performance of minority businesses in the defense marketplace. With SBA size standards as a limiting factor, it will be difficult for the DoD to find sufficient numbers of qualified minority business enterprises to meet this dollar volume, especially since the size of many of the MBE's in the defense industry has been unrealistically inflated by revenues from subcontracts from the SBA via the Section 8(a) program. These MBE's have historically faced considerable difficulty after leaving the 8(a) business development program because of limited access to traditional financial institutions and bias within the marketplace. As a result, many of these firms have not survived as minority businesses after leaving the support of the 8(a) program. To create a larger source of qualified SDB's and to offer a source of market access to MBE's who have left the 8(a) program, it is recommended that revenues of the MBE's which were obtained via the 8(a) program, not be considered in determining the size of these firms when competing under the SDB set-aside program. Such an action would not constitute a novel approach to addressing this issue. In fact, it was originally proposed in a draft of the U.S. House of Representatives Bill, H.R. 1807, addressing the 8(a) program participation. Further, the SBA has the authority to take such action within the framework of 13 CFR 121.2 and 13 CFR 124.112(a)(2). Alternatively, as the intent of this legislation is neither to redistribute procurement dollars among small businesses nor to lower the amount of procurement dollars among small businesses, the size standards for "disadvantaged business" under this legislation could be redefined based on the number of employees or other relevant criteria.

The CHAIRMAN. Mr. Gooden, I'm going to have to decline that request. We asked Mr. Latham to submit a statement for the record which will be admitted without objection in the record. I will read your statement, Mr. Latham, and we are honored to have you here this morning. I regret this, but because of my own time constraints, I am going to have to forgo that.

[The prepared statement of Mr. Latham follows:]

TESTIMONY OF WELDON H. LATHAM*

OF

REED SMITH SHAW & MCCLAY

ON

S. 1993

THE MINORITY BUSINESS DEVELOPMENT REFORM

ACT OF 1987

BEFORE THE SENATE SMALL BUSINESS COMMITTEE

FEBRUARY 18, 1988

* WELDON LATHAM IS A PARTNER IN THE NATIONAL LAW FIRM OF REED SMITH SHAW AND MCCLAY, IN THIS CAPACITY HE REPRESENTS A WIDE CROSS SECTION OF GOVERNMENT CONTRACTING FIRMS, INCLUDING A NUMBER OF PAST AND PRESENT, SMALL AND 8(A) CONCERNS. MR. LATHAM ALSO SERVED AS GENERAL DEPUTY ASSISTANT SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ASSISTANT GENERAL COUNSEL, EXECUTIVE OFFICE OF THE PRESIDENT'S OFFICE OF MANAGEMENT AND BUDGET (OMB); AND CAPTAIN IN THE HONORS PROGRAM OF THE GENERAL COUNSEL'S OFFICE OF THE AIR FORCE.

TESTIMONY OF WELDON H. LATHAM
ON
S. 1993

BEFORE THE SENATE SMALL BUSINESS COMMITTEE
FEBRUARY 18, 1988

GOOD MORNING, CHAIRMAN BUMPERS, SENATOR WEICKER AND MEMBERS OF THE COMMITTEE.

IT IS A PLEASURE TO APPEAR BEFORE THIS COMMITTEE TODAY TO DISCUSS S. 1993, THE MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987. I AM AN ATTORNEY, AND I HAVE SPENT A NUMBER OF YEARS IN PRIVATE PRACTICE, PRIVATE BUSINESS AND APPOINTED FEDERAL GOVERNMENT POSITIONS. IN EACH CASE I HAVE ADDRESSED A VARIETY OF FEDERAL PROCUREMENT ISSUES. I CURRENTLY REPRESENT OVER FORTY 8(A) AND FORMER 8(A) COMPANIES, INDIVIDUALLY AND AS PART OF A COALITION. THE VIEWS I EXPRESS TODAY, REPRESENT THOSE OF A NUMBER OF THESE FIRMS. AS SUCH I HAVE SOME SPECIFIC OPINIONS AS TO HOW TO ACHIEVE THE COMMITTEE'S GOAL OF BETTER PREPARING SOCIALLY AND ECONOMICALLY DISADVANTAGED COMPANIES TO SURVIVE AND COMPETE IN THE OPEN MARKET.

BEFORE DISCUSSING THE SUBSTANCE OF THIS LEGISLATION, I WOULD FIRST LIKE TO THANK THIS COMMITTEE BOTH FOR INVITING ME TO TESTIFY AND FOR ITS CONTINUED EFFORTS ON BEHALF OF THE MINORITY BUSINESS COMMUNITY. I AM AWARE THAT THE COMMITTEE STARTED WORKING

ON REVISIONS TO THE PRESENT 8(A) PROGRAM MORE THAN TWO (2) YEARS AGO. I CONGRATULATE YOU ON YOUR EFFORTS; HOWEVER, THERE ARE CERTAIN CHANGES WE WOULD STRONGLY RECOMMEND TO THE PROPOSED MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT.

SALE OF FORMER 8(A) FIRM AFTER GRADUATION

SECTION 404 OF S. 1993 REQUIRES SECTION 8(A) OWNERS TO MAINTAIN OWNERSHIP AND CONTROL OF THE CONCERN THROUGHOUT THE PERFORMANCE OF ALL 8(A) CONTRACTS AND OPTIONS. THIS WOULD PROHIBIT 8(A) OWNERS FROM FREELY RAISING CAPITAL OR OTHERWISE MAKING SIGNIFICANT CORPORATE ORGANIZATIONAL CHANGES EVEN AFTER GRADUATION OR TERMINATION FROM THE PROGRAM. WE DO NOT OBJECT TO RESTRICTING TRANSFER OF OWNERSHIP AND CONTROL WHILE THE FIRM IS STILL IN THE 8(A) PROGRAM; HOWEVER, AN 8(A) OWNER SHOULD BE ALLOWED TO SELL ALL OR PART OF HIS OR HER BUSINESS AFTER GRADUATION, IN THE SAME MANNER AS ANY OTHER BUSINESS OWNER.

THE CURRENT LAW DOES NOT REQUIRE SECTION 8(A) OWNERS TO MAINTAIN OWNERSHIP AND CONTROL OF THEIR CONCERNS AFTER GRADUATION. I UNDERSTAND THAT SECTION 404 IS IN RESPONSE TO AN ISOLATED INCIDENT IN WHICH AN 8(A) COMPANY "LOADED UP" ON 8(A) CONTRACTS, WITH OPTIONS EXTENDING BEYOND GRADUATION, AND SOLD OUT TO A MAJORITY-OWNED COMPANY SHORTLY AFTER ITS GRADUATION. SUCH A COMPLETE SELL OUT IS EXTREMELY RARE. ACCORDING TO THE SENATE'S OWN REPORT, OF 461 FIRMS SURVEYED THAT GRADUATED BETWEEN OCTOBER 1980 AND AUGUST 1986, THE REPORT UNCOVERED ONLY ONE (1) THAT HAD SHIFTED FROM ONE HUNDRED PERCENT (100%) MINORITY TO ONE HUNDRED PERCENT (100%) NON-MINORITY OWNERSHIP AFTER GRADUATION. [SEE S.

REP. NO. 29, 100TH CONG., 1ST SESS. 2 (1987)*.] THE SURVEY REVEALED FOUR (4) FIRMS THAT HAD SHIFTED TO GREATER THAN FIFTY PERCENT (50%) NON-MINORITY OWNERSHIP. EVEN THE HOUSE SMALL BUSINESS COMMITTEE REPORT ON H.R. 1807 IDENTIFIED ONLY SEVEN (7) FORMER 8(A) COMPANIES THAT HAVE BEEN ACQUIRED BY NON-DISADVANTAGED BUSINESSES DURING THE LAST FIVE (5) YEARS. [SEE H. REP. NO. 460, 100TH CONG., 1ST SESS. 35 (1987).] WE UNDERSTAND THE PORTFOLIO OF SECTION 8(A) COMPANIES CERTIFIED IN THE PROGRAM HAVE BEEN APPROXIMATELY 3,000, AT ANY GIVEN TIME OVER THE LAST SEVERAL YEARS. THE SALE OF EVEN SEVEN (7) OUT OF 3,000 COMPANIES IS STILL LESS THAN TWO-TENTHS OF ONE PERCENT (.2%). THUS THE FEAR THAT MANY 8(A) OWNERS WILL SIMPLY SELL OUT TO MAJORITY-OWNED COMPANIES, IS TOTALLY UNSUPPORTED BY THE EVIDENCE. TO LEGISLATE A STRINGENT SOLUTION WITH SEVERELY NEGATIVE REPERCUSSIONS FOR THE LEGITIMATE, HONEST DISADVANTAGED BUSINESS PERSON WOULD REPRESENT THE WORST FORM OF CONGRESSIONAL MICROMANAGEMENT.

IT IS IMPORTANT FOR THE WELL-BEING OF THE 8(A) GRADUATE TO BE ABLE TO FREELY RAISE CAPITAL TO FINANCE GROWTH AND THE TRANSITION FROM THE SHELTERED MARKET INTO A FULLY COMPETITIVE ENVIRONMENT. ONCE IT NO LONGER HAS ACCESS TO THE 8(A) PROGRAM, IT MAY NEED TO SELL SIGNIFICANT PORTIONS OF ITS STOCK TO INFUSE CAPITAL AND TO PERMIT IT TO FINANCE ITS COMPETITIVE ACTIVITIES. RESTRICTING THE FORMER 8(A) COMPANY'S ABILITY TO RAISE CAPITAL AT

* THE REPORT IS ENTITLED "SURVEY OF THE GRADUATES OF THE SMALL BUSINESS ADMINISTRATION SECTION 8(A) MINORITY BUSINESS DEVELOPMENT PROGRAM", AND WAS PUBLISHED ON MAY 12, 1987.

THIS VITAL JUNCTURE IN ITS EVOLUTION, WOULD "RECREATE" ONE OF THE VERY "DISADVANTAGES" THE 8(A) PROGRAM WAS INTENDED TO OVERCOME, I.E. INADEQUATE ACCESS TO CAPITAL. RATHER THAN ADDRESS THE CONCERN IDENTIFIED IN THE AFOREMENTIONED SENATE SURVEY-- WHICH IS WHY FORMER 8(A) FIRMS FAIL; THIS PROVISION WOULD GREATLY CONTRIBUTE TO THAT VERY FAILURE OF 8(A) GRADUATE FIRMS.

AS YOU KNOW, IN ORDER TO BE ELIGIBLE TO PARTICIPATE IN THE 8(A) PROGRAM, AN APPLICANT CORPORATION MUST BE ONE WHICH IS AT LEAST FIFTY-ONE PERCENT (51%) OWNED BY AN INDIVIDUAL WHO IS DETERMINED TO BE SOCIALLY AND ECONOMICALLY DISADVANTAGED. A MAJORITY OF THIS NATION'S PUBLICLY HELD CORPORATIONS ARE CONTROLLED BY LESS THAN TWO PERCENT (2%) OF THE TOTAL VOTING SHARES OF COMMON STOCK OUTSTANDING. HOWEVER, A MINORITY COMPANY THAT HAS GROWN TO A LEVEL THAT REQUIRES A PUBLIC OFFERING AS A MEANS OF SECURING ADEQUATE CAPITAL TO FINANCE ITS FUTURE GROWTH, DEVELOPMENT AND ALLOW IT TO COMPETE EFFECTIVELY IN THE OPEN MARKET WOULD BE PROHIBITED, UNDER THIS BILL, FROM USING THIS MEANS TO SECURE CAPITAL. FOR EXAMPLE, IF A FORMER 8(A) FIRM WERE TO INITIATE A PUBLIC OFFERING OF FIFTY-FIVE PERCENT (55%) OF ITS COMMON STOCK, RETAINING FORTY-FIVE PERCENT (45%) IN THE HANDS OF THE COMPANY'S SOCIALLY AND ECONOMICALLY DISADVANTAGED OWNER (WHICH WOULD BE MORE THAN NECESSARY FOR "EFFECTIVE" CONTROL) THE TRANSACTION WOULD BE BARRED BY S. 1993. EVEN THOUGH THE COMPANY IN OUR HYPOTHETICAL WOULD FAIL WITHOUT THE NEEDED INFUSION, IT WOULD STILL LOSE THE OPTION YEARS ON ITS 8(A) CONTRACTS, MERELY FOR SELLING SLIGHTLY MORE THAN FIFTY-ONE PERCENT (51%) OF ITS OWNERSHIP. WE DO NOT BELIEVE THE INTENT OF THIS COMMITTEE IS TO

PLACE THIS "UNINTENDED" DISADVANTAGE UPON THE FORMER 8(A) BUSINESS OWNER.

FURTHERMORE, THE OFT REPEATED CONGRESSIONAL PURPOSE OF THE 8(A) PROGRAM IS TO "MAINSTREAM" GRADUATE FIRMS. THESE FIRMS WILL NEVER BE FULLY MAINSTREAMED, HOWEVER, UNTIL THEY POSSESS THE SAME RIGHTS, PRIVILEGES, AND OBLIGATIONS OF MAJORITY BUSINESSES. IT IS PATENTLY UNFAIR TO RESTRICT THE SALE OF FORMER 8(A) FIRMS WHEN THERE IS NO SIMILAR RESTRICTION ON ANY OTHER SHELTERED MARKET FEDERAL PROCUREMENT PROGRAM. NEITHER CONTRACTS OBTAINED UNDER THE SMALL BUSINESS SET-ASIDE PROGRAM, NOR UNDER SOLE SOURCE CONTRACTS OBTAINED BY SUBSIDIARIES OF LARGE MAJORITY FIRMS ARE SUBJECT TO ANY SUCH PROHIBITION. BOTH A SMALL BUSINESS, HOLDING SET-ASIDE CONTRACTS, AND A SUBSIDIARY OF A LARGE BUSINESS, HOLDING SOLE SOURCE CONTRACTS, CAN BE SOLD "LOCK, STOCK AND BARREL" WITHOUT EVEN A THREAT OF LOSS OF THESE CONTRACTS.

IT IS BOTH UNFAIR AND ILLOGICAL TO HOLD 8(A) CONTRACTORS TO A HIGHER STANDARD, WHICH IS ALSO AT ODDS WITH THE GOAL OF THE PROGRAM, I.E. TO FOSTER SELF SUFFICIENT MAINSTREAMED COMPANIES. CERTAINLY THESE COMPANIES SHOULD NOT BEAR A HEAVIER BURDEN AFTER THEY GRADUATE FROM THE PROGRAM. THEY PARTICIPATE IN THE PROGRAM TO OVERCOME THE EXTRA BURDENS THEY HAVE ALREADY BORN BY VIRTUE OF THEIR SOCIALLY AND ECONOMICALLY DISADVANTAGED STATUS. THEREFORE, IF THEY ARE TO BE "MAINSTREAMED", THEY MUST BE TREATED EQUALLY AND EQUITABLY UPON GRADUATION. INDEED, THIS PROVISION MAY EVEN BE UNCONSTITUTIONAL, AS IT APPEARS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE.

EVEN IN THOSE FEW INSTANCES WHERE 8(A) GRADUATES SELL THEIR COMPANIES COMPLETELY TO A MAJORITY-OWNED COMPANY, THERE MAY BE BENEFITS TO THE MINORITY COMMUNITY. FIRST, FORMER 8(A) EMPLOYEES WILL HAVE AN OPPORTUNITY TO BE "MAINSTREAMED" INTO MAJORITY-OWNED BUSINESSES, WHICH CAN PROVIDE THEM WITH NEW EMPLOYMENT OPPORTUNITIES. THE ACTUAL INTEGRATION OF MINORITIES INTO POSITIONS IN LARGE CORPORATIONS MAY BE AN UNINTENDED POSITIVE BY-PRODUCT OF THE OCCASIONAL SALE. THE INTEGRATION OF FORMER 8(A) COMPANY EMPLOYEES INTO MAINSTREAM COMPANIES WILL ALLOW THEM TO WORK TO IMPROVE MINORITY RELATIONS FROM THE INSIDE. THEY CAN ALSO ENCOURAGE SUBCONTRACTING TO MINORITY-OWNED COMPANIES. THUS EVEN WHERE THE MINORITY-OWNED COMPANY DOES SELL TO A MAJORITY-OWNED COMPANY, OTHER POSITIVE RESULTS CAN OCCUR.

FINALLY, THE SENATE RESTRICTION IS EVEN MORE SEVERE THAN THE COMPARABLE PROVISION IN H.R. 1807. S. 1993 WOULD REQUIRE "TERMINATIONS FOR DEFAULT", WHILE H.R. 1807 WOULD ONLY REQUIRE "TERMINATIONS FOR CONVENIENCE". AT A MINIMUM, SHOULD THIS COMMITTEE ELECT TO RETAIN ANY FORM OF THIS RESTRICTION ON THE SALE OF BUSINESS (WHICH WE RECOMMEND AGAINST); THE LIMITED RESTRICTION SHOULD BE CAREFULLY CRAFTED TO ADDRESS ONLY THOSE FEW INSTANCES WHERE THE INDIVIDUAL INTENTIONALLY SEEKS TO THWART THE MINORITY BUSINESS DEVELOPMENT GOALS OF THE PROGRAM.

SMALL DISADVANTAGED BUSINESS PROGRAM REFORMS

THE AFOREMENTIONED SENATE SURVEY STRESSES THE SEVERE NEED FOR A "TRANSITION PROGRAM" TO ASSIST 8(A) FIRMS WHICH GRADUATE FROM THE PROGRAM AND MUST TRANSITION INTO THE FULLY

COMPETITIVE MARKET PLACE. MANY EXPERTS IN THE AREA OF MINORITY SMALL BUSINESS PERCEIVE THE DEPARTMENT OF DEFENSE ("DoD") SMALL DISADVANTAGED BUSINESS ("SDB") PROGRAM AS THE FIRST SUCH WORKABLE FEDERAL "TRANSITION" PROGRAM. WHILE S. 1993 DOES NOT PRESENTLY ADDRESS THE SECTION 1207 PROGRAM OF PUBLIC LAW 99-661, [THE HOUSE VERSION OF THIS BILL (H.R. 1807) DOES]; SUCH ACTION IS IMPERATIVE TO TRUE "REFORM" OF THE 8(A) PROGRAM.

THE HOUSE PASSED A TWENTY-FIVE PERCENT (25%) INCREASE IN THE SIZE STANDARDS FOR THE SECTION 1207 PROGRAM, AND WE URGE THE SENATE TO ADOPT AN EVEN MORE APPROPRIATE SIZE INCREASE.

THE DoD CONTRACTS IN QUESTION, OFTEN ARE VALUED IN MULTI-MILLION DOLLAR AMOUNTS AND THE DoD CONTRACTORS AND INDUSTRIES WHICH COMPETE FOR THESE CONTRACTS ARE PREDOMINATED BY LARGE AND "SUPER" LARGE FIRMS. AS THIS COMMITTEE WELL KNOWS, THE TOP 25 DoD GOVERNMENT CONTRACTORS, FOR EXAMPLE, SECURED CONTRACTS VALUED BETWEEN NEARLY \$1 BILLION TO MORE THAN \$8 BILLION IN THE GOVERNMENT'S FY 1986. IN ADDITION, THE TOP 100 COMPANIES AND THEIR SUBSIDIARIES DOING BUSINESS WITH DoD, RECEIVED CONTRACTS AGGREGATING APPROXIMATELY \$100 BILLION. SUCH FACTORS ARE RELEVANT AND MUST BE WEIGHED IN ESTABLISHING A NEW AND MORE APPROPRIATE SIZE STANDARD SOLELY FOR PURPOSES OF THIS DoD MINORITY BUSINESS PROGRAM. GIVEN THE ORDER OF MAGNITUDE THESE DoD CONTRACTS AND CONTRACTORS REPRESENT, A SIGNIFICANTLY LARGER STANDARD IS CLEARLY IN ORDER. CERTAINLY, NEWLY GRADUATED 8(A) FIRMS CANNOT BE EXPECTED TO COMPETE EFFECTIVELY AGAINST THESE SUPER LARGE CONTRACTORS. SIZE STANDARDS TO BE UTILIZED SOLELY FOR THIS DoD PROGRAM, PERHAPS ARE ACCEPTABLE AT A LEVEL AS MUCH AS TEN (10)

FOLD LARGER THAN THE PRESENT STANDARDS. ONE SUGGESTION THAT HAS BEEN OFFERED IN MEETINGS WITH VARIOUS SDBs, CONGRESSIONAL AND OTHER OFFICIALS, IS ONE SIZE STANDARD FOR THIS DoD PROGRAM OF 1500 EMPLOYEES. WE RECOMMEND THAT THE COMMITTEE ADOPT THIS NEW SIZE STANDARD FOR THE SDB PROGRAM.

WE WOULD ALSO RECOMMEND THAT THE SMALL BUSINESS COMMITTEE, WHICH IS CONCERNED WITH AVOIDING ABUSES OF ALL ITS PROGRAMS, ENACT AN ADDITIONAL PROVISION RELATING TO THE P.L. 99-661 SDB PROGRAM. TO ASSURE THE ACCOMPLISHMENT OF THE PURPOSES OF SECTION 1207, AND TO PREVENT THE DIVERSION OF FUNDS INTENDED FOR THE DISADVANTAGED BUSINESSES INTO NON-DISADVANTAGED COMPANIES, THERE MUST BE LIMITATIONS ON THE EXTENT TO WHICH SDBs MAY SUBCONTRACT WORK AWARDED UNDER THE SECTION 1207 PROGRAM TO NON-DISADVANTAGED BUSINESSES. WHILE THIS IS NOT AN ISSUE CURRENTLY ADDRESSED IN S. 1993, WE RECOMMEND LEGISLATIVE RESOLUTION OF THIS PROBLEM, WHICH HAS NOT BEEN ADEQUATELY ADDRESSED.

SUBCONTRACTING LIMITATIONS ARE NEEDED, WHICH ARE SIMILAR TO THOSE IN EFFECT UNDER SBA SECTION 8(A). (SEE P.L. 99-661, SECTION 921 (C), AND THE REGULATIONS SET FORTH AT 13 C.F.R. § 124.302(B).) NO SUCH LIMITATIONS EXIST AS RELATES TO THE SDB PROGRAM OF SECTION 1207. SINCE THE SECTION 8(A) PROGRAM AND THE SECTION 1207 PROGRAM HAVE SIMILAR PURPOSES, AND ARE BOTH GUIDED BY THE SMALL BUSINESS ACT, SIMILAR SUBCONTRACTING LIMITATIONS ARE ESSENTIAL. THE ATTACHED PROPOSED AMENDMENT TO S. 1993 PROVIDES FOR SUCH LIMITATIONS, AND PARALLELS THE LANGUAGE OF 13 C.F.R. PART 123.302(B). [SEE ATTACHMENT A]

SO AS NOT TO PUT THE SDB PRIME CONTRACTOR AT A DISADVANTAGE BECAUSE IT WOULD ONLY BE PERMITTED TO SUBCONTRACT A LIMITED VOLUME TO LARGE MAJORITY-OWNED COMPANIES, THIS AMENDMENT ALSO WOULD PERMIT MORE EXTENSIVE SUBCONTRACTING BY THE SDB PRIME CONTRACTOR WITH OTHER DISADVANTAGED BUSINESSES, AS DEFINED IN SBA REGULATION 13 C.F.R. PART 124.105. THIS WOULD ALSO FACILITATE THE USE OF "OTHER THAN SMALL" DISADVANTAGED BUSINESSES UNDER THIS PROGRAM, WITH NO LIMITATION AS TO THE SIZE OF THE DISADVANTAGED SUBCONTRACTOR.

RANKING DoD OFFICIALS FAMILIAR WITH THE DEPARTMENT'S EFFORTS TO INCREASE CONTRACTING OPPORTUNITIES FOR DISADVANTAGED BUSINESSES HAVE OPENLY STATED THAT IT IS HIGHLY UNLIKELY THAT DoD WILL FULFILL THE CONGRESSIONALLY MANDATED FIVE PERCENT (5%) GOAL BECAUSE "THERE ARE NOT ENOUGH SMALL DISADVANTAGED BUSINESSES TO ADEQUATELY PERFORM THE WORK." THIS AMENDMENT WOULD HELP TO FACILITATE TEAMS OF SMALL AND "OTHER THAN SMALL" DISADVANTAGED BUSINESSES, WHICH WILL INCREASE THE POOL OF AVAILABLE COMPANIES THAT CAN ASSIST IN MEETING THE FIVE PERCENT (5%) GOAL. IT WOULD ALSO ASSIST IN CREATING THE FIRST REAL TRANSITIONAL PROGRAM FOR COMPANIES THAT HAVE GROWN OUT OF THE SECTION 8(A) PROGRAM, WHICH THE SENATE "SURVEY OF THE GRADUATES OF THE SMALL BUSINESS PROGRAM" STATED IS ESSENTIAL. FINALLY, IT WOULD PROMOTE COOPERATIVE EFFORTS BETWEEN PRESENT AND FORMER 8(A) FIRMS IN THE DISADVANTAGED COMMUNITY.

BUSINESS MIX

AS YOU KNOW, TITLE IV, SECTION 401 OF S. 1993 REQUIRES PROGRAM PARTICIPANTS TO ATTAIN SPECIFIED PERCENTAGES OF NON-8(A) BUSINESS AT VARIOUS MILESTONES AFTER THEIR INITIAL THREE (3) YEARS IN THE PROGRAM. A FIRM WOULD BE REQUIRED TO COMPLY WITH THE FOLLOWING RIGID STATUTORY GOALS FOR THE REMAINING PROGRAM TENURE:

AT THE END OF YEAR FOUR (4), EIGHTY PERCENT (80%) OF FIRMS TOTAL SALES CAN BE 8(A); SEVENTY PERCENT (70%) AT THE END OF YEAR FIVE (5); FIFTY-FIVE PERCENT (55%) AT THE END OF YEAR SIX (6); AND TWENTY-FIVE PERCENT (25%) AT THE END OF YEAR SEVEN (7).

FIRMS MUST BE WITHIN FIVE PERCENT (5%) OF THESE GOALS TO BE CONSIDERED IN COMPLIANCE. HOWEVER, IF A FIRM FAILS TO COMPLY WITH THIS MIX OF 8(A) AND NON-8(A) CONTRACTS, IT WILL BE INELIGIBLE TO RECEIVE NEW 8(A) CONTRACTS.

WE DO FAVOR SOME MIX OF 8(A) AND COMPETITIVELY SECURED CONTRACTS. IT IS IMPORTANT FOR FIRMS TO LEARN HOW TO EFFECTIVELY COMPETE IN THE MARKETPLACE. THE PERCENTAGE AT COMPLETION OF THE SIXTH YEAR OF FIFTY-FIVE PERCENT (55%), HOWEVER, WOULD BE EXCESSIVELY RESTRICTIVE. TWENTY-FIVE PERCENT (25%) AT THE COMPLETION OF THE SEVENTH YEAR WOULD BE EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ACHIEVE.

THE HOUSE VERSION OF THE LEGISLATION REQUIRES A DOCUMENTED GOOD FAITH EFFORT ON THE PART OF 8(A) FIRMS TO ACHIEVE THE MIX. THE SENATE BILL MAKES THE PERCENTAGE OF MIX TOO RIGID AND UNNECESSARILY MANDATORY. WE SUPPORT THE HOUSE VERSION AS A MORE REASONABLE APPROACH TO LIMIT 8(A) DEPENDENCY BY DISADVANTAGED FIRMS.

CURRENTLY, THERE ARE NO STATUTORY LIMITATIONS ON 8(A) SOLE SOURCE AWARDS AND NO STRICT COMPETITIVE REQUIREMENTS WITHIN THE PROGRAM. SECTIONS 401 AND 403 OF THE SENATE BILL WOULD NOW GO TO THE OTHER EXTREME. IT WOULD REQUIRE A SIGNIFICANT AMOUNT OF NON-8(A) CONTRACTS VIA THE BUSINESS MIX AS WELL AS REQUIRE COMPETITION WITHIN THE PROGRAM. ONLY CONTRACTS BELOW \$2 MILLION FOR SERVICES, SUPPLY AND CONSTRUCTION, AND \$1 MILLION FOR ALL OTHER CONTRACTS, COULD BE AWARDED ON A NON-COMPETITIVE BASIS. BOTH APPROACHES SEEM UNNECESSARY AND RIGID. GREATER FLEXIBILITY, PERMITTING LARGER NON-COMPETITIVE 8(A) CONTRACTS SHOULD BE RETAINED, UNDER APPROPRIATE CIRCUMSTANCES.

LIMITING THE SIZE AWARD

SECTION 403 (D)(C) OF SENATE BILL LIMITS THE SIZE OF AN AWARD ON A NONCOMPETITIVE BASIS IF THE EXPECTED AWARD PRICE EXCEEDS MORE THAN ONE HUNDRED FIFTY PERCENT (150%) OF THE TOTAL CONTRACT PRICE PAID TO A FIRM FOR ITS LARGEST CONTRACT. THIS PROVISION IS ARBITRARY AND SERVES NO USEFUL PURPOSE. UNDER THE PRESENT SYSTEM, A COMPANY COULD SECURE A CONTRACT THAT COULD GREATLY EXCEED THE PROPOSED LIMITATION IF SBA DETERMINED THAT THE PARTICULAR CONTRACT, SIGNIFICANTLY ENHANCED THE FIRM'S BUSINESS PLAN OBJECTIVES AND IMPROVED ITS LIKELIHOOD OF FUTURE SUCCESS AND COMPETITIVENESS. SECTION 403 WOULD STIFLE MINORITY BUSINESS GROWTH, AND SHOULD BE DELETED, IN FAVOR OF SOME VERSION OF THE PRESENT SYSTEM.

CONCLUSION

WE APPRECIATE THE EFFORTS OF THIS COMMITTEE TO REFOCUS THE OBJECTIVE OF THE 8(A) PROGRAM AND YOUR COMMITMENT TO PROVIDE BUSINESS DEVELOPMENT FOR THE MANY MINORITY-OWNED FIRMS WHICH SO DESPERATELY NEED IT TO HELP THEM GROW AND SURVIVE IN THIS ECONOMY.

WE ALSO WOULD APPRECIATE YOUR SERIOUS CONSIDERATION OF OUR VIEWS WITH REGARD TO BOTH THE DoD SDB PROGRAM AND THE 8(A) PROGRAM REGARDING, LIMITATIONS ON SUBCONTRACTING, BUSINESS MIX, AND THE ELIMINATION OF THE SALE OF BUSINESS RESTRICTIONS AND THE LIMITATIONS OF SIZE OF AWARDS.

ADOPTION OF OUR RECOMMENDATIONS IN THIS REGARD WILL GREATLY ENHANCE THE FUTURE SUCCESS OF THE 8(A) PROGRAM IN A MANNER CONSISTENT WITH THE FINDINGS OF THE SENATE SURVEY.

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE.

ATTACHMENT A

PROPOSED AMENDMENTS TO S. 1993 REGARDING LIMITATIONS
ON SUBCONTRACTING IN P.L. 99-661, § 1207 FIVE
PERCENT (5%) GOAL PROGRAM

Performance of work by the SDB concern.¹ To assure the accomplishment of the purposes of the program, and to prevent the diversion of funds intended for the disadvantaged business community into non-disadvantaged companies, each SDB shall be required to perform work equivalent to the following percentages of the total dollar amount of each subcontract, exclusive of material costs, with its own labor force, or with the assistance of another socially disadvantaged business:²

- (1) Manufacturing -- 50 percent.
- (2) Construction:
 - (a) General Construction -- 15 percent.
 - (b) Special Trades, Such as Electrical Plumbing, Mechanical, etc. -- 25 percent.
- (3) Professional Services -- 75 percent.
- (4) Nonprofessional Services -- 75 percent.

The SDB concern is required to include in its proposal to perform a given contract a statement that it agrees to perform the required percentage of the work with its own labor force, or with the assistance of another socially disadvantaged business. Refusal of the concern to provide such a statement will result in the contract not being awarded.

¹. Defined in Part 19.001 of the Draft Final Regulations presented by Deputy Secretary of Defense William H. Taft, VI to the House Armed Services Committee Acquisition Policy Panel on October 29, 1987 ("Draft Final Regulations").

². Defined in Small Business Administration ("SBA") regulation 13 C.F.R. Part 124.105.

The CHAIRMAN. Mr. Gooden, let me say that your testimony is excellent. I have always said that if I were going to go in the popcorn business, I would go talk to somebody that had been successful in the popcorn business. You have obviously been a successful 8(a) contractor, and your testimony weighs very heavily with this Committee. And I must also say that virtually every—I'm not sure everyone with maybe the exception of one—all of the objections you have to the bill, of course, are not just yours. Others have voiced objections to the bill in the same areas, for example, the business mix with the 8(a) contracts and the limitation of awards. We obviously will be changing those fairly dramatically during the markup session. Your testimony is extremely helpful to us on that.

I may direct some written questions to you and Mr. Latham for your written responses, but for the moment, I'll forgo those and thank both of you very much for your efforts in helping this Committee. Your help is invaluable to us. Thank you very much.

Mr. GOODEN. Thank you very much.

The CHAIRMAN. Dr. Saucedo, thank you for joining us.

STATEMENT OF DR. ROBERT SAUCEDO, PRESIDENT, CASDE CORP., TORRANCE, CA, AND CHAIRMAN, LATIN AMERICAN MANUFACTURERS ASSOCIATION

Dr. SAUCEDO. Mr. Chairman, thank you very much for the privilege of being here.

I will be extremely brief. I know you have several time constraints and I will not impose on them.

As you well know, my name is Robert Saucedo. I am founder, president and CEO of a small company called CASDE Corp. CASDE is a high technology engineering company doing work for the Department of Defense. We involve ourselves with a large spectrum of work that the U.S. Navy performs.

In 1984 we were selected by DOD as the Minority Prime Contractor of the Year not because of our size, but because of our performance and ingenuity in solving some of their problems. That is an award that I am extremely proud of. We did absolutely no politicking for it. It was based in my opinion on merit.

The CHAIRMAN. That's refreshing. Go ahead.

Dr. SAUCEDO. I must stress that I run CASDE with two principles paramount. One of the principles is that I demand performance, and the other is that I demand the highest ethical conduct possible. All of our employees work to a code of ethics that is extremely high where the perception of wrongdoing is just as bad as wrongdoing itself. And Senator, I very, very much enforce that. I feel that the 8(a) Program cannot tolerate any more scandals. CASDE Corp. will not be a party to that.

I also would like to tell you that I agree with the general thrust of the legislation, and the thrust being, of course, competition, business development, development of self-sufficiency and the curbing of fraud and abuse.

I must also tell you that I endorse the recommendations made by the Coalition for Minority Business. They have submitted comments on your fine bill, and I would like to introduce that for the record as well.

The CHAIRMAN. It will be admitted.¹

Dr. SAUCEDO. Senator, S. 1993 in my opinion is overly constraining for two classes of companies, the small companies that are just getting started in the 8(a) Program and the mature companies. Contrary to what Congressman LaFalce had to say, I don't believe a number of the provisions are conducive for their development; I will elaborate very shortly.

I also believe that mature companies preparing to transition out of the 8(a) Program are not well addressed by this particular bill. The super-successful firms, of course, are able to get by most of these situations, and I refer, for example, to ISA, the company that just testified before me as being one of these super-successful companies. And I say that with admiration.

There are a number of provisions in here that are just very detrimental. For example, the provision of business mix is overly constraining and severe. I think you understand those ramifications already, and have intentions of modifying that.

I would offer a concept of what I call "competitive fitness." It is a concept which I have employed in CASDE Corp. for the past 2 years. It is an attempt to make my company competitive in the marketplace. And I do this by addressing a number of things that require management attention: reduction of indirect rates, reduction of direct labor rates, creation of the right infrastructure in the company, development of a program of business development that addresses a lot of different things including the business mix of the company, and increasing productivity. All of those elements should be addressed. However, they should be addressed by the particular company that understands its environment, that understands its own business. That's something that I don't feel can be legislated. I think, however, that most companies should most definitely address those kinds of things in their business plan. I believe they are essential.

The program participation period of 10 years in my opinion is too short. The Senate survey published in May 1987 showed that a 10 year period was minimal. That same survey also showed that the failure rate for graduated firms was 30 percent with an additional 52 percent unaccounted for. And that 52 percent statistic is alarming in itself. People wouldn't return phone calls, wouldn't return a request for documentation, for letters, and so forth. Obviously one can conjecture about the present status of those 52 percent. I personally don't believe they remain in business. And if that is true, the failure rate of 8(a) companies graduating is closer to 82 percent, which is well above the national norm. Senator, something is obviously wrong with the program.

I sincerely believe that the program is too short especially for some of the companies facing termination or graduation at this point in time. A number of the companies have been able to develop well; most of the companies have not, Senator. I put CASDE Corp. in that latter category. I feel CASDE needs another 2 to 3 more years to develop; not because I have not focused on developing the company competitively but because, in our case, 6 years is

¹ Written statement from coalition for Minority Business never submitted.

simply not enough time to develop a competitively viable high-tech company.

I certainly have not received any help from the SBA in that regard. I have not had any business development expertise offered to me. It is something that I have had to develop on my own.

My own personal background is that I'm very highly technical. I have a Ph.D. in engineering. To be honest with you, I have been learning the business as I go along. I think I've progressed. My company today will probably do about \$16 to \$17 million worth of business this fiscal year. We will have on our staff about 350 professional people. I consider that a success. I don't consider that a super success.

As soon as I graduate, I, like Mr. Gooden, will have to face competition with the Westinghouses, the Raytheons, and the General Dynamics of the world. Senator, I am not afraid of that. I will face that with courage and determination and CASDE will survive. A lot of smaller companies will not. That is an insurmountable obstacle for a lot of companies.

Your bill contains a provision to increase business opportunities for minority companies, 5 percent through 1993 and 10 percent thereafter. And I think that is an admirable goal. The one thing I caution you, is that in order to accomplish that, it takes two things. It takes the opportunities from the Government communities themselves, and it takes a larger population in the minority community itself. More companies in the 8(a) Program, that means more companies being allowed into it and more companies being allowed to stay in longer. Please remember Senator, that the SIC code size limitations prevent a company from being other than "small."

The bill's provisions dealing with competition, while attempting to curb fraud and abuse, presents several major problems. One is that the thresholds are much too low. And I won't talk to that very much. I think that is something that has been discussed with your staff and other people at great length.

Another aspect that has not been discussed very much is the effect those actions will have on procuring activities. In my opinion it will be detrimental. One of the virtues of the 8(a) Program is expediency in contracting. Whether we like to admit it or not, one of the reasons that procuring agents will place contracts with 8(a) companies is because it is faster. The contracting cycle can be shortened. If that contracting cycle is made longer or retained the same as for any other competition, procuring activities will turn away from the 8(a) Program, pure and simple.

In that regard, Senator, I would encourage you to talk to Small and Disadvantaged Business Utilization Specialists (SADBUS), in the Department of Defense. I personally have done that. They have formed opinions on this and I think their viewpoint would be valuable in your deliberations.

I believe that if competition in the 8(a) Program is not legislated properly, it could wreck the program. And it could wreck it for one of the reasons I just mentioned.

The other item that I would like to call to your attention is the prohibition of the sale of a business, section 404 in your bill. I personally don't understand why minority businesspersons are singled out for this kind of treatment. Other small businesspeople are not.

Other big businesses are not. If the business is failing and they need equity financing, why can't they raise it? Is bankruptcy a better solution? If the business is thriving and needs additional capital for growth, why can't they raise it? Why can't they raise it through equity financing? Is stagnation a better solution? I don't think so. I believe that provision is unfair and unwieldy and uncalled for.

One of the arguments that I continually hear is that 8(a) companies receive sole-source procurements and, therefore, the implication is, they are gifts. Senator, they're not gifts. CASDE Corp. in June of this past year received a \$5 million contract to assist in the overhaul of the combat information center for the U.S. Saratoga. Our bid to do that was \$5.7 million. We settled for \$5 million over an intense negotiation. The negotiation took a period of weeks. The procurement officer did not move from his stated position. What he considered "fair and reasonable" is what we wound up settling for. Not only that, he insisted on an incentive fee contract where if we exceeded our target cost, we would have to share with the Government the additional cost on a one-for-one basis. For every dollar that was spent over our targeted amount, CASDE Corp. would have to pay 50 cents. Senator, that procurement officer was brutal in his approach, but he was right. He was absolutely correct. We settled for the contract. We're performing it now. We will do the job for the amount stated.

The point of all this is that sole-source awards in the 8(a) world are negotiated procurements. They are not gifts. The small businessperson or the minority businessperson during negotiations is not treated preferentially. He is abused just like everybody else. And we expect it.

My question then is, if I have to raise capital for whatever reason, why are my hands tied? Certainly it could not be the fear that owning less than 50 percent would cause a loss of control of the business. I intend to control my business. Armand Hammer controls his business with about 1 percent of the equity.

The CHAIRMAN. He's not socially and economically deprived though.

Dr. SAUCEDO. Senator, I don't consider myself socially nor economically nor, for that matter, spiritually deprived either. But that's my own personal observation.

The last point, on this subject I would like to address, is the myth that 8(a) companies "load up" on 8(a) contracts one day and then sell out the next is simply not true. I know of one specific example where that happened. I do not know of any others. And my caution, Senator, is please, let's not punish the many for the actions of the few.

My last point has to do with what I call artificial constraints on growth. Section 403 does that. The 150 percent constraint—

The CHAIRMAN. That is going to be changed I promise.

Dr. SAUCEDO. That's fine, sir.

The House bill has a similar provision to that. It's under section 15, which is very constraining, and it is artificial. No need for it.

Senator, my fondest hope is that the bill that finally emerges from Congress truly sets the 8(a) Program on the right track, that it increases the number of participants, that it increases the

number and dollar amounts of 8(a) procurements, that it produces greater numbers of competitively viable firms, and that it curbs fraud and abuse. Senator, I thank you very much for the privilege of testifying before you.

[The prepared statement of Dr. Saucedo follows:]

TESTIMONY TO THE
SENATE COMMITTEE ON
SMALL BUSINESS

SENATOR DALE BUMPERS, CHAIRMAN

Regarding Senate Bill 1993, the
"Minority Business Development Program
Reform Act of 1987"

Presented by

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Introduction

Senator Bumpers, Senator Weicker, Senator Kerry, distinguished members of the Senate Small Business Committee, I consider it a privilege to appear before you and present my views on Senate Bill 1993 (S.1993) the "Minority Business Development Program Reform Act of 1987".

My name is Robert Saucedo, I am the Founder, President and C.E.O. of CASDE Corporation. I have a Ph.D. in Engineering, am author of a text book in the field of computer control systems, a lecturer having taught at major universities, am listed in several Who's Who, and previously held positions of responsibility with Litton Industries, I.B.M., Westinghouse, Aerospace Corporation, and Northrop Corporation. At Litton, I was Director of Engineering for Litton Ship Systems. I consider myself a solid member of our country's professional community, having made significant contributions to space, aviation, and shipbuilding. I am also Chairman of the Board for the Latin American Manufacturers Association which represents over 500 Hispanic manufacturing and high technology firms throughout the United States.

The company which I formed, CASDE Corporation, is a high technology engineering company doing work primarily for the Department of Defense (DoD). We analyze, design, test, and evaluate aircraft, ships, and different types of weapon systems. We are specialists in the field of submarine design. CASDE has offices in the states of California and Virginia.

We enjoy an excellent reputation for performance and integrity. In 1984, CASDE was selected by DoD as the "Minority Prime Contractor of the Year". The award was given for our performance and creativeness in helping to solve problems faced by the Navy. I am extremely proud of that award.

I will end this background discussion by telling you that I run CASDE Corporation with two principles paramount: I demand performance and the highest ethical conduct possible. My people work to a code of ethics fully realizing that the perception of wrong doing is just as serious as wrong doing itself.

With that short discourse behind us let me comment first on S.1993 and then on the bill passed by the House, HR.1807. With your indulgence I will make observations and recommendations as I proceed and summarize at the end.

General Observation

First of all, I fully agree with the thrust of the legislation which is Competition, Business Development and Self Sufficiency, and the Curbing of Fraud & Abuse. It has the basic ingredients of a very fine bill. However, some of its provisions need modification. The Bill appears to be overly constraining for two classes of companies: those that are small or new to the program and those that are mature but not super successful firms.

Business Mix

The mandatory requirements of a non 8(a) business mix, while having the proper motivation, is overly severe and constraining. The Bill treats all businesses alike not recognizing that firms

simply do not develop at the same rate, that high tech firms for example, are quite different in their development than low tech firms, that one business environment differs substantially from another. If these provisions had been inflicted on the program in prior years, CASDE would have been ousted from the 8(a) program, and in my opinion Senators, the program, the U.S. Navy and the country, would not have benefitted from our many contributions.

In the early years of a company's development, firms tend to develop based upon the reputation and capabilities of their key people. During this period, their market place is usually quite narrow. The next period is what I call "opportunity driven". Having succeeded in establishing themselves in a particular field, they are next placed in a role of responding to a number of opportunities not necessarily controllable by the firm. The third and possibly last period is one of controlled development. The firms understand the market-place, what they provide, and are able to develop both tactical and strategic plans. The third period is where the firms exert a lot of control over their business mix. It is the unusual or super firm that can enter the third period during the fourth or fifth year. Usually it takes much longer. CASDE has entered this phase in the sixth year.

Let me suggest Senators rather than trying to legislate business development, that you consider mandating but not

legislating "Competitive Fitness". CASDE Corporation has such a program. It consists of the following features:

- 1) a management focus on reducing the indirect rates every year;
- 2) a management focus on reducing the average direct labor rates each year;
- 3) increasing the productivity of each employee by providing state-of-the-art tools and equipment, such as computers, and training in their use;
- 4) creating the required company infrastructure;
- 5) establishing a business development program: i.e., learning to market, gathering intelligence, making the right Bid/No Bid decisions, writing winning competitive proposals, diversifying its business base, etc.

CASDE has had such a program for the past two years with established milestones to measure progress. The intent is to enable CASDE to compete successfully: to become competitively viable.

All 8(a) companies should be encouraged to develop such a program. It should be developed by the companies to suit their specific environment and development. In fact, it should be developed as part of their business plan. These are constructive steps which all 8(a) companies should be required to address.

Program Participation and Transition Term

Along similar lines, Senators, I feel that S.1993's program participation term of 8 years is inadequate. The Senate's own

survey pulished in May 1987, showed that a 10 year participation period was the minimum length of time to achieve viability. For high technology companies like CASDE, it takes even longer. We deal in a very sophisticated world where we will have to compete with the TRWs, Hughes, the Westinghouses of the world. In CASDE's case, our first contract was a \$98,000 effort spread over two years; we were basically inducted into the 8(a) program by the procuring agency to satisfy their own goals. I didn't even know what the 8(a) program was about. It took me a full two years to understand the potential of the program; certainly there were no volunteers to assist me in any way: certainly not the SBA. I didn't even know what I didn't know.

Distinguished members of the Senate Small Business Committee, I submit that program participation should be at least 10 years and that a transition period be established for participants nearing the end of their FPPT and for recent graduates. If you permit some of the firms to be graduated prematurely, we are risking continued high failure rates of these firms. We are squandering valuable resources. CASDE Corporation, in spite of our efforts to become competitively fit, has not reached that threshold. We need at least three more years in the program. I guarantee that with that extra period of time, CASDE would achieve competitive viability.

One of the many fine provisions in this Bill is found in Section 601 whereby minority small business goals will rise from 5% in fiscal years 1989 through 1993 to 10% thereafter. Two main things are necessary for achievement of this goal: first, realistic government contracting opportunities must be identified

and set aside and secondly, the number of minority firms capable of satisfying the requirements must be increased. That means, letting more firms into the program and keeping them, and others already in the program, in long enough to develop into competitively viable firms.

Fears of 8(a) companies becoming too large are not based on fact; the S.I.C. code size standards, which in themselves are quite dated, will not permit this.

Competition

The Bill's provision dealing with formal competition in the 8(a) program while attempting to curb fraud and abuse, presents three major problems; 1) the thresholds for competition are much too low, 2) the actions of the procuring agency will be adversely affected, and 3) it will severely impair the Government's ability to achieve the established minority contracting goals and those increased levels proposed by this legislation. Indeed, one of the principal attractions for government agencies of the 8(a) program is expediency: theoretically placement of an 8(a) award is faster than a competitively procured one, by a factor of about two. My own experience with the 8(a) program reflects this. CASDE's first significant 8(a) contract was awarded after three years of intensive marketing. The first two years were spent in marketing our capabilities and convincing the technical people we could solve their problems. They believed me, however, they wouldn't even attempt to initiate a contracting action because it would take entirely too long: anywhere from 2 to 3 years and they couldn't wait that long. The world has a tendency to

continue rotating in spite of our desires. When I received 8(a) certification, however, their entire attitude changed; they could expect to place the procurement within a years period of time. And indeed that is what happened. I am quite certain that if I had not received 8(a) certification, I would not have received that first contract with the Navy.

Formal competition in the 8(a) program has the potential for wrecking the program. Procuring agencies will not place 8(a) contracts unless they have a compelling reason to do so. As previously mentioned, that reason is expediency; a shortening of time in the award cycle. Serious consideration should also be given to mandating a more efficient 8(a) contracting procedure. A time limit of no more than four months should be imposed for all 8(a) contracts from the time a procurement request is introduced to the time an award is made. I might suggest that you solicit testimony from small and disadvantaged business utilization specialists presently working for DoD and hear from them on the impact of 8(a) competition on their procurements. The competitive thresholds as set forth in the Bill are entirely too low. New and small companies would have to compete with the larger, more mature firms. I submit Senators, that the smaller firms would lose nine out of ten times in such competitions. Companies like CASDE would benefit from this provision. It would, however, wreak havoc with the smaller firms. It simply is not fair. The thresholds should be raised to \$10 million for the furnishing of supplies and services and \$5 million for all others.

Sale of a Business

The prohibition of the sale of a business, Section 404 of the Bill, should be eliminated. In a program that is destined to become more and more competitive, why are minority business persons being singled out in terms of what they can or cannot do? This constraint is certainly not inflicted on other small businesses; and certainly not on big businesses. Why then has the minority small business person been singled out for this unusual treatment? Is it the specter of sole source awards and the attitude these are handouts?

Members of the Small Business Committee, last June CASDE Corporation received a \$5 million contract to assist in the overhaul of the combat information center on the USS SARATOGA. Our bid to do this job was \$5.7 million. We settled for \$5 million during intense negotiations because the procurement officer did not budge from his position of what he considered a "fair and reasonable" cost. Furthermore, he insisted on an incentive fee contract where CASDE shared in the cost risk on a one for one basis. Senators, that procurement officer was brutal in his stand. But he was right! He saved the government and its tax payers money.

The point is that sole source awards in the 8(a) program are negotiated procurements. They are not handouts. Minority small business persons are not treated preferentially during negotiations. Why then tie their hands in such fundamental matters as seeking to raise capital?

If I as a minority business person have a struggling

business in need of capital, why shouldn't one of my alternatives be equity financing? Is the preferred solution bankruptcy? If my business is thriving and I need capital to sustain its growth, why shouldn't I be able to consider equity financing? Is the alternative stagnation? Why are minority business persons treated differently from all other business persons?

The myths of minority firms loading up on 8(a) contracts one day and then selling their company the next is simply not borne out. To my knowledge that has happened only once. Again let's not punish the many for the actions of the few.

Another factor to consider is that the business person routinely deals with other institutions in which the worth of the business is a key parameter. Dealings with banks fall in this category. If there is not a potential buyer for the business, either real or imagined, the worth of the business is severely diminished. The business person's ability to effect a good transaction is consequently unnecessarily constrained.

Artificial Growth Limitations

The last item which I will discuss are the provisions which artificially restrict growth. In the Senate Bill, Section 403 prohibits 8(a) firms from obtaining a non-competitive contract if the contract price exceeds by more than 150% the total contract price paid for performance of the concern's largest previous contract.

In CASDE's case for example, our first 8(a) contract was for \$98 thousand; our second was for \$548 thousand: obviously much more than the stipulated 150% increase. Many things had changed

in our company, however, during that interval between the two contracts. The first contract was awarded basically to a one-man consultancy; the second to a fledgling high technology company. The government client carefully evaluated CASDE's capability to perform. They were satisfied. They awarded the contract. They were right. CASDE went on to become one of their valued contractors in the field of ship and submarine survivability.

If that provision had existed when I got started, CASDE would probably not be in existence today. It has been my experience that the procuring agencies do a thorough job of evaluating a firms capabilities. Why not leave that process to the real world and to those who have a vested interest in selecting companies with the ability to perform their requirements, the procuring activities.

The house bill, H.R.1807, has a provision which artificially restricts growth also. Section 15 of H.R.1807 states that "no award shall be made to an 8(a) firm if such award would cause the firm to exceed its approved 8(a) contract support level". Furthermore, that support level is constrained such that, for any three year period, the firm would not exceed the applicable size standard for its primary industry if it actually was awarded such a level of contracts.

There is no logical basis for such constraints. Support levels as proposed in a firm's business plan represent marketing goals. They should be encouraged within the total context of the business plan, not limited by preconceived ideas of what is appropriate. What is wrong with exceeding arbitrarily set

support levels? This merely represents successful marketing efforts. Is it the fear that some firms are going to get more than others? Senators, that is the American way. Attempts to legislate market parity among minority businesses should not be made. Existing S.I.C. Code size limitations already address the problem of a firm's size. Why impose further curbs that limit self-marketing initiative?

H.R. 1807 also limits support levels to a firm's "primary" industrial S.I.C. Code. That also is wrong. CASDE Corporation started out as a high technology engineering company, consequently its primary S.I.C. Code is 8711 with a size constraint of \$13.5 million. We have every intention and the requisite resources and capabilities to develop into a manufacturing concern. That is the normal evolution. Just because I did not have the foresight to include a manufacturing S.I.C. Code in my business plan six years ago is certainly no reason to constrain CASDE now. If the procuring activity is satisfied that CASDE Corporation is capable of manufacturing its product, why should the SBA deny any company that opportunity?

Summary

At this point I would like to summarize my recommendations.

- 1) The mandatory requirement of a non 8(a) business mix should be eliminated. The concept of "competitive fitness" should be considered instead.
- 2) The program participation period should be at least 10 years.

- 3) A transition period should be established for firms in the program as of 1 January 1987 to provide them also with a 10 year term starting with inception of their original FPPT start date, which for all firms commenced in April 1982.
- 4) Competitive thresholds should be raised to \$10 million for the furnishing of supplies and services and \$5 million for all other contracts. Contracting procedures for 8(a) procurements should be mandated to take no longer than four months from the time a procurement request is introduced to the time an award is made.
- 5) Prohibition on the sale of all or parts of a minority business should be eliminated.
- 6) The provision prohibiting 8(a) firms from obtaining a non competitive contract if the price exceeds by more than 150% the total contract price paid for performance of the concern's largest previous contract should be eliminated.
- 7) The House bill's provisions (H.R. 1807, Section 15) restricting support levels should be eliminated. Wording further restricting support levels to "primary" S.I.C. Codes should also be eliminated.

My fondest hope Senators, is that the bill that finally emerges from conference truly sets the 8(a) program on the right track, that it increases the number of participants, that it increases both the number and dollar amount of 8(a) procurements,

that it produces greater numbers of competitively viable firms, and that it curbs fraud and abuse. The 8(a) program truly offers hope and promise to the minority community.

Senators, in my opinion, the "Minority Business Development Program Reform Act of 1987" has the potential for satisfying its mandated objectives. It just needs additional attention to the provisions discussed here and pointed out in the Coalition for Minority Business' position paper which has been previously submitted. I personally endorse the coalition's recommendations.

I thank you for the privilege of testifying before you.

The CHAIRMAN. Thank you, Dr. Saucedo. Your testimony is excellent. We appreciate it very much. We may have some questions for you in writing.

One other question. Steven Denlinger, who was a former official for the Latin American Manufacturers Association, pleaded guilty to misdemeanor charges in the Wedtech case. I assume you know him.

Dr. SAUCEDO. Yes, sir, I do know him.

The CHAIRMAN. He testified in the Nofziger trial that he thought he needed White House ties to keep his job and to help LAMA member companies get contracts. Do you share those beliefs?

Dr. SAUCEDO. Absolutely not. Mr. Chairman, I am chairman of the board of LAMA, Latin American Manufacturers Association. I assumed that position last October. And I carry with me the firm beliefs of ethics in business just like I do for my own personal company. LAMA has subscribed to a code of ethics which we are trying to promulgate amongst its members. We will not, LAMA will not, endorse any company for its own individual interest, period. Mr. Denlinger did what he did for his own personal reasons not as part of LAMA. He no longer is with LAMA, Senator.

The CHAIRMAN. Thank you very much.

[The prepared statement of Senator D'Amato follows:]

STATEMENT BY SENATOR ALFONSE M. D'AMATO
BEFORE THE SENATE SMALL BUSINESS COMMITTEE
FEBRUARY 18, 1988

MR. CHAIRMAN, I WOULD LIKE TO WELCOME TO THE SMALL BUSINESS COMMITTEE THIS MORNING OUR DISTINGUISHED PANEL OF WITNESSES WHO WILL CONTINUE THE DISCUSSION ON THE MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT.

AT THE FIRST HEARING ON THIS LEGISLATION WE HEARD FROM A VARIETY OF WITNESSES WHO PRESENTED THEIR VIEWS ON S. 1993. THERE WAS A GENERAL CONSENSUS AMONG THE WITNESSES ABOUT THE NEED FOR THIS REFORM LEGISLATION. WITHOUT REFORM, THE 8(A) PROGRAM FACES AN UNCERTAIN FUTURE. WE ALL AGREE THAT THIS PROGRAM IS VITAL TO THE MINORITY BUSINESS COMMUNITY.

PUBLIC PERCEPTION OF THE 8(A) PROGRAM IS AT AN ALL-TIME LOW. THE LEGISLATION BEFORE US IS THE PROGRAM'S CHANCE TO PROVE TO ITS CRITICS THAT IT IS A VITAL AND PRODUCTIVE PROGRAM TO THE MINORITY BUSINESS COMMUNITY.

S. 1993 IS A MAJOR STEP IN REVITALIZING THE 8(A) PROGRAM. PROVISIONS IN THE LEGISLATION WILL DE-POLITICIZE THE SBA AND OUTLINE THE PENALTIES FOR THOSE WHO ENGAGE IN IMPROPER ACTIVITIES. COMPETITION IS INJECTED INTO THE

PROGRAM TO BETTER PREPARE PROGRAM PARTICIPANTS FOR THEIR
EVENTUAL GRADUATION.

SINCE THE COMMITTEE'S LAST HEARING ON THIS LEGISLATION,
I HAVE BEEN CONTACTED BY NUMEROUS MINORITY BUSINESS GROUPS
WHO HAVE EXPRESSED CONCERN OVER PORTIONS OF THE BILL. AREAS
OF CONCERN INCLUDE THE \$2 MILLION THRESHOLD, AND THE
MANDATORY BUSINESS-MIX PROVISIONS.

I LOOK FORWARD TO THE CONTINUED DIALOGUE ON THIS
LEGISLATION THIS MORNING, AND TO THE TESTIMONY OF OUR
WITNESSES.

THANK YOU, MR. CHAIRMAN.

The CHAIRMAN. The Committee will stand in recess until the next call.

[Whereupon, at 12:05 p.m., the Committee recessed subject to the call of the Chair.]

**S. 1993, THE MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987 AND
H.R. 1807, THE CAPITAL OWNERSHIP DEVELOPMENT REFORM ACT OF 1987**

THURSDAY, FEBRUARY 25, 1988

**U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
*Washington, DC.***

The Committee met, pursuant to notice, at 2:06 p.m., in room SR-428A, Russell Senate Office Building, Hon. John F. Kerry (Acting Chairman) presiding.

**STATEMENT OF HON. JOHN F. KERRY, A U.S. SENATOR FROM THE
STATE OF MASSACHUSETTS**

Senator KERRY. The hearing will come to order. Thank you all. My apologies for a slightly tardy beginning.

Welcome to the continuing series of hearings which we are holding regarding legislation to improve the 8(a) Program. As you all know—I guess we have had two hearings so far. This is the third—I have the pleasure of chairing the Urban and Minority-Owned Business Development Subcommittee. And so we are actually hearing under those auspices of the full Committee.

As you know, we have two bills in front of us, a House bill and a Senate bill. We are going to be focusing on testimony today from individuals who are the participants and/or recent graduates of the 8(a) Program. We will also hear from representatives of various associations whose members are 8(a) firms. I think it is important that we receive this testimony for a lot of different reasons, but obviously we need to understand how this can be both user-friendly to the procuring community, as well as to the participating firms themselves. We are anxious to make sure that the reforms in the 8(a) Programs are, indeed, reforms and not efforts to wind up hindering the business development or making the whole process more difficult than it may already be.

The response to our request for association input and participant input has been good, but it could be better. We are still seeking additional comments, and we intend to leave the record open for an additional 2 week period in order that we may receive additional comment.

Our bill, the Senate bill, and the House bill are both aimed at making this program better at regaining its focus as a business development program for minority contractors, but at the same time

doing things that will significantly improve the participant's prospect for success in the businessplace in the long run.

Both Chairman Bumpers and Chairman LaFalce have emphasized that the program can't continue to be perceived as a mere contracts program, merely a conduit for awarding noncompetitive contracts which are maintained throughout the firm's term in the program. Such a program doesn't fit the definition of an effective business development program. And I think that the preliminary findings that the GAO presented at our last hearing strongly suggests that 8(a) firms are all too often remaining dependent on a sole-source contract throughout their participation which makes them very ill-prepared to be able to survive once the term of that contract is over.

So, obviously the question is how do you get a balance. How do you balance the competing interests? Some are debating obviously over the goals issue versus the requirements issue, and I am sure we are going to hear about that today. We want to hear about that. That is certainly at the center of debate about where we go with this.

As many of you know, also the GAO reaffirmed reports that we have heard for some time about the distribution of current contracts, and those reports are disturbing when you realize that less than 2 percent of the total number of participants are awarded 33 percent or 35 percent of the contract dollars, and the fact that 40 percent of the firms receive no contract awards at all, and another 20 percent did less than \$100,000 in 8(a) business last year per firm. So, clearly we need to address that. And the sole-source contract award system that is presently at the heart of the process is something that we need to look at to do that.

We are going to discuss the requirements for business mix and try to determine what amount of non8(a) business activity is appropriate as a firm goes through its period of contracting.

So, I am delighted to welcome the several panels here, participants, former participants, as we search for a nonpunitive bill and one that will appropriately fulfill the requirements and goals of this Committee as well as those of the Congress itself.

[The prepared statements of Senators Kerry, Bumpers, Weicker, and Dixon follow:]

OPENING STATEMENT

SENATOR JOHN F. KERRY
ACTING CHAIRMAN
COMMITTEE ON SMALL BUSINESS

HEARING
ON

S.1993, THE "MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987"
AND
H.R. 1807, THE "CAPITAL OWNERSHIP DEVELOPMENT REFORM ACT OF 1987"
FEBRUARY 25, 1988

THIS AFTERNOON THE COMMITTEE ON SMALL BUSINESS CONTINUES ITS HEARINGS ON LEGISLATION TO IMPROVE THE SBA'S 8(A) PROGRAM. WE HAVE BEFORE US TWO BILLS: FIRST, THIS COMMITTEE'S BILL, S. 1993, THE "MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987" INTRODUCED BY OUR CHAIRMAN, DALE BUMPERS, ON DECEMBER 21, 1987; AND, SECOND, THE HOUSE SMALL BUSINESS COMMITTEE'S BILL, H.R. 1807.

TODAY, WE WILL BE FOCUSING ON TESTIMONY FROM INDIVIDUAL 8(A) PROGRAM PARTICIPANTS AND RECENT GRADUATES. WE WILL ALSO HEAR FROM REPRESENTATIVES OF VARIOUS ASSOCIATIONS WHOSE MEMBERS ARE 8(A) FIRMS. IT IS IMPORTANT THAT WE RECEIVE TESTIMONY FROM THOSE WHO HAVE PARTICIPATED IN THE PROGRAM. TO OBTAIN YET BROADER PARTICIPATION IN THE PROCESS OF EVALUATING THESE BILLS, THE COMMITTEE HAS SOLICITED COMMENTS FROM AN ARRAY OF 8(A) FIRMS AND ASSOCIATIONS REPRESENTING SUCH FIRMS. THE RESPONSE HAS BEEN GOOD, 47 AS OF TODAY. WE ARE STILL SEEKING ADDITIONAL COMMENTS. IF THERE IS NO OBJECTION, THE RECORD FOR THIS HEARING WILL REMAIN OPEN FOR TWO WEEKS, UNTIL MARCH 11, 1988, IN ORDER THAT WE CAN RECEIVE ADDITIONAL STATEMENTS.

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OUR BILL, AND THE HOUSE BILL, ARE BOTH AIMED AT MAKING THE PROGRAM BETTER, REGAINING ITS FOCUS AS A BUSINESS DEVELOPMENT PROGRAM FOR MINORITY CONTRACTORS, SOMETHING WHICH WILL SIGNIFICANTLY IMPROVE THE PROGRAM PARTICIPANT'S PROSPECTS FOR SUCCESS IN THE COMPETITIVE MARKETPLACE, AFTER GRADUATION. BOTH CHAIRMAN BUMPERS AND CHAIRMAN LAFALCE HAVE EMPHASIZED THAT THE 8(A) PROGRAM CANNOT CONTINUE TO BE PERCEIVED AS A MERE "CONTRACTS PROGRAM", SOLELY A CONDUIT FOR THE AWARD OF NONCOMPETITIVE CONTRACTS THROUGHOUT A FIRM'S TERM IN THE PROGRAM. SUCH A PROGRAM DOES NOT FIT THE DEFINITION OF AN EFFECTIVE BUSINESS DEVELOPMENT PROGRAM. YET, THE PRELIMINARY FINDINGS OF THE GAO, PRESENTED AT OUR LAST HEARING, STRONGLY SUGGEST THAT 8(A) FIRMS ALL TOO OFTEN REMAIN OVERLY DEPENDENT ON SOLE SOURCE CONTRACTS THROUGHOUT THEIR PARTICIPATION IN THE PROGRAM, MAKING THEM ILL PREPARED FOR GRADUATION AND SURVIVAL IN THE COMPETITIVE MARKETPLACE. SOLUTIONS SHORT OF LEGISLATIVE DIRECTION SEEM TO HAVE FAILED.

GAO ALSO REAFFIRMED THE RESULTS OF ITS 1981 REPORT SHOWING THAT THE TOP 50 8(A) FIRMS, LESS THAN 2% OF THE TOTAL NUMBER OF PARTICIPANTS, ARE AWARDED 35% OF THE CONTRACT DOLLARS. OF EVEN GREATER CONCERN, HOWEVER, WAS GAO'S FINDING THAT 40% OF THE FIRMS RECEIVED NO CONTRACT AWARDS AND ANOTHER 20% DID LESS THAN \$100,000 IN 8(A) BUSINESS, LAST YEAR.

FURTHER, THE SOLE-SOURCE CONTRACT AWARD SYSTEM THAT IS PRESENTLY AT THE HEART OF THE PROGRAM PROVIDES A FERTILE GROUND FOR WRONGDOING, AS DEMONSTRATED BY THE CONTINUED REVELATIONS CONCERNING ONE 8(A) FIRM, THE WEDTECH CORPORATION. SUCH ACTIVITY

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IS UNACCEPTABLE IRRESPECTIVE, OF WHETHER IT IS EGREGIOUS CORRUPTION THAT MAKES HEADLINES, OR MANIPULATION AT THE "NOISE LEVEL". IT ALL HURTS THE PROGRAM, BY ERODING PUBLIC CONFIDENCE.

AN ARRAY OF IMPROVEMENTS TO THE PROGRAM HAVE BEEN INCORPORATED INTO BOTH BILLS. MOST COULD BE CHARACTERIZED AS "NONCONTROVERSIAL", ALTHOUGH I AM CONFIDENT THAT A LITTLE CONTROVERSY CAN BE EXPECTED AS WE GET CLOSER TO THE WORDS THAT WILL ULTIMATELY APPEAR IN THE UNITED STATES CODE. OTHER PROVISIONS OF BOTH BILLS, AIMED AT THE LONG-TERM AND PERSISTENT PROBLEMS WITH THE CONTRACTING ASPECTS OF THE PROGRAM, HAVE GENERATED MORE CONSISTENT HEAT. STRONGLY HELD POSITIONS EXIST ON BOTH SIDES OF THESE ISSUES.

TODAY, WE WILL CONTINUE TO HEAR ABOUT THE NEED FOR COMPETITION, FOR WHAT SIZE CONTRACTS, AND WHAT KIND OF COMPETITION. WE WILL BE DISCUSSING REQUIREMENTS FOR A "BUSINESS MIX" OF 8(A) AND NON-8(A) BUSINESS ACTIVITY AS A FIRM MOVES THROUGH THE PROGRAM TOWARDS GRADUATION. ON THIS ONE, THE PRIVETAL ISSUE SEEMS TO BE WHETHER THE "BUSINESS MIX" SHOULD BE A REQUIREMENT OR MERE GOALS. WE ARE ALREADY AWARE THAT THE "BUSINESS MIX" PERCENTAGES IN S. 1993 NEED TO BE ADJUSTED, BUT TO WHAT LEVELS?

THESE AND OTHER COMPLEX ISSUES ARE THE ONES WE WILL BE CONFRONTING AS WE MOVE TOWARDS MARK-UP, I WOULD GUESS IN MID-APRIL SHORTLY AFTER THE EASTER RECESS. YET, WHATEVER CHANGES TO THE 8(A) PROGRAM WE FINALLY DECIDE UPON, IN VERY LARGE MEASURE, THEY MUST BE "USER FRIENDLY". NONE OF US WANT A BILL THAT CAN FAIRLY

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BE DESCRIBED AS "PUNITIVE". NONE OF US WANT A BILL THAT CAN BE OBJECTIVELY CHARACTERIZED AS "UNFAIR". SEVERAL OF THE PROVISIONS OF S. 1993 HAVE BEEN ASSIGNED BOTH LABELS. THIS DISTURBS ME. I AM CONFIDENT THAT IT ALSO DISTURBS SENATOR BUMPERS AND SENATOR WEICKER. BASED ON THE ASSERTIONS WE HAVE HEARD, A CAREFUL ASSESSMENT OF THE BILL'S PROVISIONS HAS ALREADY BEEN INITIATED. BUT THESE ASSERTIONS WILL BE ASCRIBED VALIDITY ON THE BASIS OF STANDARDS OTHER THAN THE NUMBER OF TIMES THEY ARE MADE, OR THE STRIDENCY OF THE COMMUNICATION.

THIS BILL WILL NOT BE "PUNITIVE"; NOR WILL IT BE MERELY A COSMETIC TOUCH-UP. IT IS LEGISLATION AIMED AT IMPROVING THE 8(A) PROGRAM SUCH THAT MINORITY SMALL BUSINESSES, A GROWING SEGMENT OF OUR ECONOMY, GET A FAIRER CHANCE TO GROW THROUGH PARTICIPATION IN THE FEDERAL PROCUREMENT MARKET.

AND, FINALLY, IN SHAPING THE BILL TO BE REPORTED, WE CANNOT LOSE SIGHT OF THE PRACTICAL NEEDS OF THE PROCURING AGENCIES WHICH PROVIDE THE CONTRACTING OPPORTUNITIES TO THE 8(A) PROGRAM. FOR THE FIRMS, THEY ARE CONTRACTING OPPORTUNITIES. FOR THE AGENCIES, BOTH WITHIN THE DEFENSE DEPARTMENT AND THE CIVILIAN AGENCIES, THESE CONTRACTS ARE FULFILLING "MISSIONS" OR CARRYING-OUT PROGRAMS. OUR SOLUTIONS MUST BE "USER FRIENDLY" TO THE PROCUREMENT COMMUNITY AS WELL.

AS CHAIRMAN OF THE SUBCOMMITTEE ON MINORITY-OWNED BUSINESS DEVELOPMENT, I AM PLEASED TO BE AN ORIGINAL COSPONSOR OF S. 1993, AND TO BE ABLE TO CHAIR TODAY'S HEARINGS. REDIRECTING AND STRENGTHENING THE 8(A) PROGRAM IS ESSENTIAL, SO THAT IT MAY

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REGAIN ITS BROAD-BASED SUPPORT WITHIN THE CONGRESS, RETAIN THE CONFIDENCE OF THE EXECUTIVE AGENCIES THAT PROVIDE THE CONTRACTING OPPORTUNITIES, BUT MOST IMPORTANTLY SO THAT IT CAN FULFILL ITS CONGRESSIONALLY MANDATED GOAL AS EXPRESSED IN PUBLIC LAW 95-507. THAT GOAL BEING THE DEVELOPMENT OF A SOUND AND COMPETITIVE BUSINESS ENVIRONMENT AMONG AMERICA'S DISADVANTAGED MINORITY COMMUNITY.

Statement of Sen. Dale Bumpers

I would like to thank Sen. John Kerry, who serves as chairman of our subcommittee on Urban and Minority Business Development, for agreeing to chair this third and final day of hearings on S. 1993. I would also like to extend my sincere appreciation not only to our witnesses who have appeared in these hearings at no small sacrifice, but also to the several dozen 8(a) firms who have written to the Committee with extremely thoughtful comments on this legislation and steps which should be taken to reform and improve this program.

Several weeks ago, Senator Weicker and I wrote to an array of minority business leaders seeking their advice and counsel about our proposals and the House bill as well. We are fortunate that many of them have responded. Some have traveled to Washington at great expense and met with me and the Committee staff, and we have all benefitted from their thinking. All of the letters which the Committee has received will be made part of our hearing record on this legislation, and all of these comments will be considered as we move toward marking up S. 1993.

I would like to assure those who have expressed reservations about this bill that we will be making changes which, I am confident, will make the bill more appealing to 8(a) firms. While I cannot now say exactly what those changes will be, and while we cannot expect to please everyone, I believe these changes will show just how important these hearings have been.

OPENING STATEMENT OF
SENATOR LOWELL WEICKER, JR.

ON

S. 1993

FEBRUARY 25, 1988

THIS AFTERNOON, THE COMMITTEE WILL CONDUCT THE LAST IN THIS SERIES OF HEARINGS ON S. 1993, THE MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987. I COMMEND SENATOR KERRY, WHO WILL CHAIR TODAY'S HEARING, FOR HIS INTEREST IN THIS LEGISLATION AND BASIC CONCERN FOR THE PRESERVATION OF THIS PROGRAM. I ALSO WANT TO THANK SENATOR BUMPERS WHO HAS SAT THROUGH EACH OF THESE HEARINGS AND DONE AN OUTSTANDING JOB AS CHAIRMAN OF THIS COMMITTEE OF PROBING AND DISCUSSING THE PROVISIONS OF THIS BILL WITH EACH WITNESS IN ORDER TO ESTABLISH A BROAD BASE OF RESPONSES FOR CONSIDERATION AS WE FINALIZE THIS LEGISLATION.

I HAVE SAID MANY TIMES THAT THE SBA 8(A) PROGRAM OFFERS THE MINORITY BUSINESS COMMUNITY A UNIQUE, AND WELL DESERVED, OPPORTUNITY TO PARTICIPATE IN THIS NATION'S FEDERAL PROCUREMENT PROCESS. WITHOUT THE PROGRAM, MANY OF THE WELL ESTABLISHED MINORITY-OWNED BUSINESSES THAT TODAY ARE MAKING A DIFFERENCE IN OUR ECONOMY MIGHT NOT HAVE BEEN ABLE TO DO SO. BUT IT SEEMS FAIRLY OBVIOUS TO ALL WHO ARE IN ANY WAY INVOLVED WITH THE 8(A) PROGRAM THAT IT IS PLAGUED BY SERIOUS MANAGEMENT, TECHNICAL AND OTHER OPERATIONAL PROBLEMS, WHICH ARE EXACERBATED BY THE PRESSURE OF "POLITICS". THIS SIMPLY MUST BE CORRECTED IF WE ARE TO PRESERVE THE PROGRAM AND, ONCE AND FOR ALL, GIVE IT THE LONGEVITY IT

DESERVES. THIS CAN ONLY BE DONE IF MEANINGFUL CHANGE, AND LEGISLATION TO SUPPORT SUCH CHANGE, IS PUT INTO PLACE. THAT IS THE INTENT OF S. 1993. AND I INTEND TO STAND BY THE BASICS OF THIS BILL.

BUSINESS DEVELOPMENT HAS BEEN THE 8(A) PROGRAM'S ACHILLES HEEL; YET, SHOULD BE ITS MAJOR THRUST. SOME OF TODAY'S WITNESSES WILL PROVIDE FRESH IDEAS ON IMPROVING THE DELIVERY OF THE DEVELOPMENTAL TOOLS NEEDED BY FIRMS TO SURVIVE AFTER THE 8(A) PROGRAM. IN ADDITION, TODAY'S WITNESSES REPRESENT THE POINTS OF VIEW OF A NUMBER OF THE INDUSTRIES SERVED BY THIS PROGRAM, INCLUDING PROFESSIONAL SERVICES, CONSTRUCTION, MANUFACTURING AND "HI-TECH" AND MOST ARE, OR HAVE BEEN, 8(A) CONTRACTORS. THEIR TESTIMONY WILL PROVIDE THE COMMITTEE WITH EXTREMELY USEFUL AND DIVERSE INFORMATION BASED ON FIRST HAND EXPERIENCES AS PARTICIPANTS AND WE WILL CERTAINLY GIVE CAREFUL CONSIDERATION TO THEIR RECOMMENDATIONS.

I UNDERSTAND THAT THE NATIONAL ASSOCIATION OF 8(A) COMPANIES, DR. ELIZABETH PAN, PRESIDENT AND THE NATIONAL ASSOCIATION OF MINORITY CONTRACTORS, RALPH THOMAS, EXECUTIVE DIRECTOR, WHO WILL TESTIFY TODAY, HAVE BEEN RESOURCEFUL TO OUR STAFFS ON THIS AND OTHER ISSUES IN THE PAST AND I TAKE THIS OPPORTUNITY TO THANK THEM.

I WELCOME EACH OF THE WITNESSES, SEVERAL WHO HAVE TRAVELED LONG DISTANCES TO BE HERE, AND OFFER MY SINCERE THANKS FOR THEIR INTEREST IN THIS LEGISLATION. MR. CHAIRMAN, I LOOK FORWARD TO REVIEWING THEIR TESTIMONY.

OPENING STATEMENT OF
SENATOR ALAN J. DIXON
ON
S. 1993
FEBRUARY 25, 1988

THANK YOU, SENATOR KERRY.

I AM PLEASED THAT YOU ARE PRESIDING ONCE AGAIN OVER A HEARING SPECIFICALLY SET UP FOR MINORITY SMALL BUSINESSES. THE FIELD HEARING YOU CHAIRED LAST YEAR IN ROXBURY, MASSACHUSETTS WAS MOST HELPFUL IN IDENTIFYING THE CONCERNS OF CURRENT 8(A) PROGRAM PARTICIPANTS. IT IS BY LISTENING TO THE PERSONS TRYING TO WORK WITHIN A SYSTEM THAT WE DEVELOP A BETTER UNDERSTANDING OF HOW THE SYSTEM WORKS -- OR DOESN'T WORK -- IN DAY TO DAY SITUATIONS. THE TRIALS RECOUNTED BY THESE INDIVIDUALS OFTEN GIVE RISE TO THE MOST PRACTICABLE SOLUTIONS.

A PRIME EXAMPLE OF THIS IS A CASE WHICH HAS PROVEN TO BENEFIT ALL PARTIES CONCERNED. THE NAVY USED TO SET ASIDE A CERTAIN TYPE OF WORK FOR THE 8(A) PROGRAM. TRADITIONALLY TWO FIRMS WOULD RECEIVE SOLE SOURCE CONTRACTS FOR THIS WORK. BOTH COMPANIES WERE CAPABLE AND COULD PERFORM. OUT OF THE FRUSTRATION THAT THEY FELT WITH THE NAVY AND THE SBA OVER WHO "SHOULD" GET THE AWARD, A FORM OF COMPETITION WAS INTRODUCED. BOTH COMPANIES BID FOR THE CONTRACT AND THE WINNER WAS THE NAVY. IT PAID A SIGNIFICANTLY LOWER COST THAN HAD BEEN ANTICIPATED. THE CONTRACT AWARD WAS SPLIT BETWEEN THE TWO COMPANIES AS A WAY OF RECOGNIZING THE CONTRIBUTIONS THAT BOTH GAVE TO THE ENHANCEMENT OF THE 8(A) PROGRAM PROCESS. THIS EXAMPLE NOT

ONLY SHOWS THAT COMPETITION AMONG 8(A) COMPANIES IS FEASIBLE, BUT IT IS DESIRABLE. IF IT WERE NOT FOR THESE TWO COMPANIES WE MIGHT NOT HAVE THE COURAGE TO PURSUE THE REFORMS CONTAINED IN S. 1993, REFORMS WHICH MAY PROVE TO BE THE SALVATION OF THE 8(A) PROGRAM AND THE MINORITY COMPANIES WHICH IT IS DESIGNED TO HELP.

I LOOK FORWARD TO RECEIVING THE TESTIMONY FROM OUR GUESTS THIS AFTERNOON. YOU CAN ALL BE ASSURED THAT WE WILL KEEP IN MIND YOUR THOUGHTS AND COMMENTS AS WE CONSIDER THIS IMPORTANT LEGISLATION.

Senator KERRY. Before turning to the first panel, if I may, let me turn to my colleague, Senator Sasser, and ask if he has any opening comment he would like to make.

**STATEMENT OF HON. JAMES R. SASSER, A U.S. SENATOR FROM
THE STATE OF TENNESSEE**

Senator SASSER. Well, thank you, Mr. Chairman. I just want to commend you for calling these hearings today.

We have been doing some actual work in this whole field with your Subcommittee, and I want to say we have been following your work and the developments with great interest. I share with you a profound interest in seeing that the 8(a) Program works, that it works as effectively as possible, and that the program is an aid to those who seek to have access to it.

And I think today the testimony that we will hear will give us an indication, No. 1, as to how effective the program is, and I think also give us an indication as to how we can make it more effective for those who would to access it in the future. That is, perhaps these witnesses today will point out areas in which the program works well and also point out areas in which the program doesn't work as well as we would all like to see it work.

So, I join with you in saying I am looking forward to hearing from these witnesses, and again thank you for continuing these hearings.

Senator KERRY. Thank you very much, Senator Sasser. I appreciate your participation. You have been working on this issue or these issues a lot longer than I have. I thank you for your help on it.

Let me just say, if I may, to the panels that I know it isn't always easy, but it can make the dialogue a little more interesting if you can summarize, and we will put your full testimony into the record. So, I would ask the panelists to try to summarize because it gives us more time to try to question and get at some of the issues we really want to dig into.

We are delighted to have you all here, Esmeralda Santiago, Dr. Daniels, and Dr. Velez. It is always nice to hear some voices from Massachusetts. Of course, it is always good to hear from Colorado too.

Why don't you lead off, Ms. Santiago.

**STATEMENT OF ESMERALDA SANTIAGO, PRESIDENT,
CANTOMEDIA CORP., HINGHAM, MA**

Ms. SANTIAGO. Thank you, Mr. Chairman. Being in the film business, I have timed my statement to exactly 6 minutes.

To give you some background, I am the owner of CANTOMEDIA, a film production company based in Boston. We have been in business 11 years, and were 8(a) certified in 1982. Our program participation ends in March 1989.

I have had a chance to read the proposed Senate and House bills and to think a bit about what some of their goals and provisions might mean for a small businessowner like me.

First, on behalf of the thousands of entrepreneurs who will be applying for 8(a) certification, I thank you for defining a specific

time period whereby the SBA is to determine if an applicant is eligible for the program. My own process took almost 2 years, and it was frustrating to keep being put off without knowing why it took so long.

I also thank you for stressing that the 8(a) Program is a business development program, not a handout, and I hope that message gets communicated to the contracting and procurement offices of all the Government agencies small and disadvantaged businesses have to deal with if they hope to do Government work. Too often, I have felt the resentment that the mere mention of set-asides engenders in people who are supposed to be administering these programs.

I appreciate the philosophy behind the 8-year maximum for program participation. However, I am concerned that while the period seems adequate for certain businesses, it may not be for others. I am concerned that businesses whose products and services are more difficult to sell will suffer from a fixed program participation period based on the date of award of their first 8(a) contract. What provision is there for a company which may get an 8(a) contract their 1st year, and then has a long stretch before the next contract comes along? Will they be dumped from the program when their 8 years are up?

I am concerned that the program goals may be misinterpreted. The emphasis on training and technical assistance is a laudable effort to help businesses succeed, but I think the kind of training must support the program goals. If the objective of the 8(a) Program is business development, then a business seeking certification must demonstrate a potential for development. I am talking about businesses with some sort of track record, however modest.

At first glance, this may seem like a burden to people seeking 8(a) status. They might argue, "if my company is profitable, why do I need 8(a)?" The answer is the program goals are to develop the business, not to start it.

In my opinion, a company shouldn't be certified 8(a) if that is the only way it can become profitable. I think that sets them up for failure when the program participation time ends. A company should show promise as a business in the products it sells, in the management, in its philosophy.

In order to make this determination, I suggest there be a mandatory incubation period for a business to get them ready for the 8(a) Program so that when they are certified, they will know how to operate in the Government environment. The entrepreneur should be trained on how to prepare a business plan before certification, not after. He or she should know the difference between a balance sheet and an income statement and how to prepare them. He or she should be familiar with the process of Government contracting, the technical and price proposals, the schedules, the rules governing delivery of goods and services and the prompt payments act.

This I know is not a popular stance, but I think it is critical for the success of the program that the entrepreneurs who have this special status be the ones most able to benefit from it. An entrepreneur who spends the first few years of their 8(a) status—8 short years—trying to figure out the mechanics of running a business and Government contracting is an individual heading for disaster when their 8-year program participation time is up.

I agree that businesses in the 8(a) Program should compete with each other for contracts. My own experience has been that in the process of competing with other 8(a) firms, I have learned a great deal about proposal preparation, budgeting and negotiating, skills that have become crucial as CANTOMEDIA prepares for graduation from the program next March.

As a businessowner, I commend the efforts that have gone into trying once more to revamp the 8(a) Program. I am heartened by what I sense is the real commitment on your part to provide meaningful assistance to the thousands of entrepreneurs whose businesses fall into the category of small and disadvantaged.

I would like to remind you, however, that while we are the ultimate beneficiaries of the program, we are also the ones out there beating the procurement bushes to see what contracts fly out. Too often I find myself in the position of educating prospective clients about the 8(a) Program, what it means, and how they can assist minority small businesses to develop and thrive. As the late Freddy Prinz used to say, "Dat's not my job."

There needs to be some way of ensuring that the program officers, the ones who first identify the need for products or service's, and the contract people who actually assign contracts, work together to ensure minority participation in the procurement process.

Too often I have made presentations to contracting officers only to learn afterwards that the process for procuring film productions doesn't initiate there but at the program level. Many times the program people are not aware that they can award 8(a) contracts to companies providing a service rather than a product.

It seems to me that part of revamping the 8(a) Program means looking beyond the benefits to the participants and thinking about how to educate the contract and procurement officers of the Federal Government to the ins and outs of minority business development because ultimately the success of the program is really in the hands of the people with the contracts.

The SBA may do its job evaluating companies for certification. The entrepreneurs may do their job developing brochures and marketing techniques. The House and Senate may spend long hours working out bills that define how things should be. But someone has to take responsibility for enforcement.

And while I think it is nice to hear that the President is being volunteered for this role, it would make me personally more comfortable if there were someone more immediately accessible whom I could approach when I have a concern directly related to my dealings as a small disadvantaged business with contract and procurement officers.

Next year CANTOMEDIA will graduate from the 8(a) Program. I am faced with the same combination of fear and optimism that greeted me the year I started my business. By now you have probably learned that entrepreneurs are the last optimists on the face of this earth, and I think minority entrepreneurs are the most optimistic of all. And that optimism stems from a belief that through our efforts we can achieve something we can be proud of, something we can point to and say: That's mine, I built it. I made it happen.

We don't consider the 8(a) Program a hand-out. We don't consider it payment for past injustices. We don't think of it as a panacea for what ails the minority business community. We see it as an opportunity; a chance to stand on our own two feet and achieve the goal of economic independence through meaningful endeavor. That's what America is all about and we want to be a part of it.

I thank you.

[The prepared statement of Ms. Santiago follows:]

Production
132 Lincoln Street
Boston, MA 02111
617 451-5111

Administration
241 North Street
Hingham MA 02043
617 740-1400

Esmeraldo Santiago
President
Frank Cantor
Creative Director

TESTIMONY: SENATE COMMITTEE ON SMALL BUSINESS

Mr. Chairman and members of the Committee, thank you for the opportunity to speak before you about the Minority Business Development Program Reform Act of 1987.

To give you some background, I'm the owner of CANTOMEDIA, a film production company based in Boston. We've been in business eleven years, and were 8(a) certified in 1982. Our program participation ends in March of 1989.

I've had a chance to read the proposed Senate and House bills and to think a bit about what some of their goals and provisions might mean for a small business owner like me.

First, on behalf of the thousands of entrepreneurs who will be applying for 8(a) certification, I thank you for defining a specific time period whereby the SBA is to determine if an applicant is eligible for the program. My own process took almost two years, and it was frustrating to keep being put off without knowing why it took so long.

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I also thank you for stressing that the 8(a) program is a business development program, not a handout, and I hope that message gets communicated to the Contracting and Procurement Offices of all the government agencies small and disadvantaged businesses have to deal with if they hope to do government work. Too often, I have felt the resentment that the mere mention of set asides engenders in people who are supposed to be administering these programs.

I appreciate the philosophy behind the 8-year maximum for program participation. But I'm concerned that, while the period seems adequate for certain business, it may not be for others. I'm concerned that businesses whose products or services are more difficult to sell will suffer from a fixed program participation period based on the date of award of their first contract. What provision is there for a company which may indeed get an 8(a) contract their first year, and then has a long stretch--a year or more, let's say--before the next contract comes along? Will they be dumped from the program when their 8 years are up?

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I'm concerned that the program goals may be misinterpreted. The emphasis on training and technical assistance is a laudable effort to help businesses succeed, but I think the kind of training must support the program goals. If the objective of the 8(a) program is business development, then a business seeking certification must demonstrate a potential for development. I'm talking about businesses with some sort of track record, however modest.

At first glance, this may seem like a burden to people seeking 8(a) status. They might argue if my company is profitable, why do I need 8(a). The answer is, the program goals are to develop the business, not to start it.

In my opinion, a company shouldn't be certified 8(a) if that's the only way it can become profitable. That's just setting them up for the big fall when their program participation ends. A company should show promise as a business--in the products it sells, in the management, in its philosophy.

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In order to make this determination, I suggest there be a mandatory incubation period for a business, to get them ready for the 8(a) program, so that when they're certified, they'll know how to operate in the government contract environment. That means, the entrepreneur should be trained on how to prepare a business plan before certification, not after. She should know the difference between a balance sheet and an income statement. She should be familiar with the process of government contracting: the technical and price proposals, the schedules, the rules governing delivery of goods and services and payments.

This, I know, is an unpopular stance, but I think it's critical for the success of the program that the entrepreneurs who have this special status be the ones most able to benefit from it. An entrepreneur who spends the first few years of their 8(a) status trying to figure out the mechanics of running a business and government contracting is an individual heading for disaster when their 8 year program participation time is up.

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I agree that businesses in the 8(a) program should compete with each other for contracts. My own experience has been that, in the process of competing with other 8(a) companies, I've learned a great deal about proposal preparation, budgeting, and negotiating; skills that have become crucial as CANTOMEDIA prepares for graduation from the program.

As a business owner, I commend the efforts that have gone into trying once more to revamp the 8(a) program. I'm heartened by what I sense is a real commitment on your part to provide meaningful assistance to the thousands of entrepreneurs whose businesses falls into the category of "small and disadvantaged."

I would like to remind you, however, that while we're the ultimate beneficiaries of the program, we're also the ones out there beating the procurement bushes to see what contracts fly out. And too often I have found myself in the position of educating prospective clients about the 8(a)

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program, what it means, and how they can assist minority small businesses to develop and thrive. As the late Freddy Prinz used to say, "Dat's not my yob, man."

There needs to be some way of ensuring that the Program Officers--the ones who first identify the need for a product or service--and the Contracting people, work together to ensure minority participation in the procurement process. Too often I have made presentations to Contracting Officers only to learn that the process for procuring film productions doesn't initiate there, but at the Program level. Many times, the Program people are not aware that they can award 8(a) contracts to companies providing a service rather than a product.

It seems to me that, part of revamping the 8(a) program means looking beyond the benefits to the participants and thinking about how to educate the Contract and Procurement Officers of the federal government to the ins and outs of minority business development.

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Because, ultimately, the success of the program is really in the hands of the people with the contracts. The SBA may do its job evaluating companies for certification. The entrepreneurs may do their job developing brochures and marketing techniques to sell their products or services. The House and Senate may spend long hours working out bills that define how things should be. But someone has to take the responsibility for enforcement. And while I think it's nice to hear that the President is being volunteered for this role, it would make me personally more comfortable if there were someone more immediately accessible whom I could approach when I have a concern directly related to my dealings as a small disadvantaged business with Contract and Procurement Officers.

Next year, CANTOMEDIA will graduate from the 8(a) program. I'm faced with the same combination of fear and optimism that greeted me the year I started my business. By now you've probably learned that entrepreneurs are the last optimists on the face of this earth. And minority entrepreneurs are the most optimistic of all. Our optimism

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stems from a belief that through our efforts we can achieve something we can be proud of, something we can point to and say--that's mine. I built it. I made it happen.

We don't consider the 8(a) program a handout. We don't consider it payment for past injustices. We don't think of it as a panacea for what ails the minority business community. We see it as an opportunity. A chance to stand on our own two feet and achieve the goal of economic independence through meaningful endeavor. That's what America is all about. And we want to be a part of it.

Thank you.

Senator KERRY. Thank you very much, Ms. Santiago, for your fine testimony. Dr. Daniels.

STATEMENT OF DR. ALFRED C.W. DANIELS, PRESIDENT, H.H. AEROSPACE DESIGN CO., INC., BEDFORD, MA, ON BEHALF OF THE BLACK CORPORATE PRESIDENTS OF NEW ENGLAND

Dr. DANIELS. Good afternoon, Senators. My name is Alfred Daniels and I am here to give testimony for the Black Corporate Presidents of New England. I am a former president of the Black Corporate Presidents of New England, and I am especially proud to be here today in order to give testimony on the S. 1993. We had an opportunity to say a few words to the Senate at the time of formulating its bill and now we appreciate the opportunity to say something after they have put the staff work together in order to complete the legislation.

We, as we said in Boston, would like to say for the benefit of the entire Committee that we are very, very pleased with the interest and the hard work that we know went into accomplishing the survey. I am familiar with the staff work done by many, including Bill Montalto, to get a significant statistical sample, in order to get the data that is now available and on which you have created such responsive legislation.

I think when we talk about the 8(a) Program, we tend sometimes to start in the middle. It is the case, of course, that the playing field is not level within the 8(a) Program. But, of course, the procurement community, the procurement ambience, largess as a whole is not a level playing field.

Indeed, as I have reported before, the smaller businesses acquired some 80 percent of the contracts. That accounts for 19 percent of the dollars. And, moreover, it is the case that as you look at the business ambience, essentially what you have is an oligopoly that is providing capability to the Government which itself is a monopoly.

As we try to make some sense of what the purposes of the program are, what we recognize is that really the program is perhaps the best place to incubate small SDB businesses. Those businesses could perhaps graduate to the section 15 small business set-aside.

Small business set-aside in a contrary fashion is actually there in order to even the market share on a spot basis. So hopefully what we can do is to create more businesses who can provide services so that the Government can get a better product at better prices.

Now, we have all heard the stories about how it costs more to do business with SDB's and 8(a) companies. I would invite all of you to review the data that is now coming in on the first 6 months of the section 1207, P.L. 99-661 program. You will find that the average price that has been paid for SDB products is below lowest possible cost. Not just fair market price, lowest possible cost.

The beginning point for my testimony which I would ask that you enter into the record is the Senate survey and my testimony is basically an attempt to articulate points based on various recommendations made within the survey.

In fact, it is the case that some 461 graduated 8(a) firms, graduated during the period 1982 through 1986 were surveyed, some 177

responses were acquired. The average time in the program of most of those who responded was 9 years but, in fact, as a group their average recommendation was for a 10-year program.

Now, obviously with that recommendation, one could support either the position taken by S. 1993 or H.R. 1807. As you know, there were several other examples, such as the Mavroules-Conte compromise bill, which looked at the same issue.

In the case of program eligibility, one recognizes that there are a number of qualification issues, some unspoken, that will be dealt with from time to time. One of the issues that we perceive as a background issue is the subject of economic disadvantage.

And so having looked at it, our constituents in BCPNE recognize that 750,000 net worth criteria is the current number. We have looked at the House bill and regard it as the appropriate position to retain and would like to go on the record on that point.

The Bid and Proposal Fund notion is, indeed, we believe, a very important aspect. Obviously, the smaller firms are doing their best just to stay alive, let alone to garner the dollars that are necessary in order to make the bids and proposal.

The recommended B&P fund is adequate, under assumptions of even distributions of the firms in the portfolio, that is the 3,000 firms, and moreover on the possibility that perhaps some \$10,000 is a reasonable amount per participant in the early stages; that is, the 1st thru 4th years. Such a fund could permit as many as a third of the target firms to have some dollars available in the B&P arena. We think that that's a laudable purpose.

On the business development notion, we clearly stand behind the H.R. 1807 two-gate, 5- and 9-year scenario. We think it is reasonable for the firms to come into the program and not be burdened by a competition mix that has been mandated in the early years.

In part, we look back at a variety of things. Two to 3 years ago, the Congress asked the DOD and SBA to give them information on the subject of competition in the 8(a) Program. The DOD's report was very clear about how careful one must be in order to articulate this competition as between peer firms.

Moreover, it is the case that when one looks at these gates of 35 percent at the 5-year point and, moreover, 75 percent at the 9-year point, it is possible to see a gradual increase at 10 percent a year through that period and, yet, not have it on an annual basis, a scrutiny that would be overly specific due to the uncertainty that exists within the ambience.

It is very difficult for the SBA to take a position or for the entrepreneur to take a position of exact determination of contract yield or competitive contract mix. We are all aware of procurement delays and other contingencies.

Many of the current program participants relied, to their detriment, upon P.L. 95-507 and the subcontracting opportunities that were to come therefrom. Many of these firms depended upon the 8(a) Pilot Program and, as we all know, we are nearly halfway through the fiscal year, the Department of Energy which was recommended to the President has not yet been available, so if we had been planning to utilize the Department of Energy, again, our hopes would have been dashed.

Unfortunately, we do not find it possible to support the 150 percent criteria. We recognize that there is a connection between the two largest contracts that a company ever has and the value of comparing the largest with the one that is just coming into the firm. However, we believe that determination of responsibility in the case of the 8(a) Program ought to be placed with the SBA, just as in the competitive ambience, the PCO makes that determination with the help of the DCAS.

On the annual contract goals amendment, and we believe that there was a grammatical error, 1998 is in the text, versus 1994. We stand corrected if we are wrong, but we would like you to look at that.

As you are aware, since 1980 there have been two White House Conferences on Small Business. I attended the first as an elected delegate and the more recent one as Senator Kennedy's designee, we have employed the Congress to set such goals and we would, of course, continue.

Our conclusion is that S.1993 as drafted would, indeed, be and would go a long way toward correcting the errors and the abuse that have occurred within the program; moreover, it would turn the program back toward business development and a competitive program, which I believe most of the witnesses will argue is an idea whose time has truly come.

Our final recommendation is that we have looked at the Senate's intent to have the bill become effective roughly 180 days after enactment. And we believe that that may provide a real opportunity. That is, as you know, in P.L. 96-481, there was a notion that we had to do grandfathering and that was accomplished by the implemented regulations.

Here we have a family of some 3,000 firms who are dealing in a world of uncertainty; namely, they do not know what kind of program will come out until you in the Senate have had an opportunity to sit in conference with the House who passed in December, H.R. 1807. No one in the portfolio will know exactly what the program will look like. We believe perhaps the 180 days that is indicated in terms of the period from enactment to effective date could perhaps be used as a grandfathering period for all the firms who are in the portfolio at the date of enactment.

Now, as to many of the issues that I have talked about and many more I have not, we have taken the time and the energy and hopefully done a useful job of providing you text that could be utilized in the bill itself to make some of the recommended changes.

Once again, we welcome the opportunity to give testimony and would answer any questions that you have, sir.

[The prepared statement of Dr. Daniels follows:]

TESTIMONY

Before the United States Senate
Committee on Small Business
Subcommittee on Urban and Minority
Owned Business Development

Concerning

S. 1993

The Minority Business Development
Program Reform Act of 1987

by

Alfred C. W. Daniels
on behalf of the
Black Corporate Presidents of New England

February 25, 1988
2:00 PM

STATEMENT OF
BLACK CORPORATE PRESIDENTS OF NEW ENGLAND

Before: Senate Small Business Committee, Sub-Committee on
Urban and Minority-Owned Business Development

Subject: S.1993, The Minority Business Development Program
Reform Act of 1987.

Date: February 25, 1988

Mr. Chairman, I am Alfred C. W. Daniels, President of
HH Aerospace Design Co., Inc., and a former President of the
Black Corporate Presidents of New England.

It is a privilege and pleasure to appear before this
Subcommittee on behalf of the Black Corporate Presidents of New
England (BCPNE). This time it is more so than usual because it
is an opportunity for the BCPNE to commend you for the care and
interest the members of the committee have shown in surveying
8(a) graduates and formulating responsive, reform legislation.

BCPNE is a business organization which represents a regional
constituency and the interest of some 6,000 minority businesses
in the New England region.

We have organized our statement in the following manner:

- 8(a) program background considerations
- Senate 8(a) graduate survey (S.Prt. 100-29) findings
- Program eligibility and participation
- The program's business development aspects
- Business development via Federal contracting
- The annual contract goals amendment
- Conclusions and recommendations

8(a) PROGRAM BACKGROUND CONSIDERATIONS

The small businesses who actively participate in Federal procurement operate under the shadow of big business. Obviously, increasing small business involvement will help to perfect the Government marketplace. Yet, the facts are that all small businesses are still competing for 80% of the total number of government contracts, the procurement dollar share of which is on averages less than 20% of the total. Each of the White House Conferences on Small Business which convened in the 1980's has implored the Congress to increase the market share of all small businesses. Saliently, via House Conference Report No. 96-1434, (joint explanatory statement of the committee conference), the conferees stated their firm belief that a conscious and deliberate effort by the Government to decrease the share of the Federal procurement budget spent with large business concerns is the fundamental prerequisite for both increasing awards to small business and for securing an increase in the number and quality

of contracts selected for the 8(a) Program. These factors suggest the continued use of the "rule of two" to fuel the Small Business engine and similar use of the 8(a) Program to incubate small disadvantaged businesses. The combined result of these policy decisions will be the perfection of the Federal procurement marketplace.

The immediately following paragraphs are designed to provide a condensed background on relevant legislation, implementing regulations and legislative initiatives.

Prior to PL 95-507, the 8(a) Program was described only in SBA Standard Operating Procedures. PL 95-507 took the primarily regulation-based 8(a) Program and gave it legislative standing. A careful analysis of the pre-PL 95-507 8(a) Program reveals that, despite the comparative success of this effective minority procurement program, the competitive development of portfolio firms was often brought into question.

Public Law 96-481 (October 1980), and particularly its implementing regulations, changed the relationship of 8(a) firms to the SBA. Indeed, based on an interim rule the entire portfolio was placed on a Fixed Program Participation Term (FPPT) basis. The maximum length of time for an FPPT was established as 7 years. Obviously, the instant legislation will be compared to PL 96-481 as amplified by its final implementing rule.

HR 1807 (Report No. 100-460) is the comprehensive, compromise bill passed by the House on December 1, 1987. The initial HR 1807 (Mavroules) was the subject of intensive testimony, including that of BCPNE. However, it differed sharply with HR 2269 (Conte), which revisited the pre-PL 95-507 concept of business opportunity. Likewise, HR 2972 (Richardson) was filed, and it established a generally more liberal stance than HR 1807. The Mavroules-Conte Amendment, in the nature of a substitute, was reported July 28, 1987. It struck a balance that was only modestly changed by the full committee. The current HR 1807 resulted.

SENATE 8(a) GRADUATES SURVEY (S. Prt. 100-29) FINDINGS

On May 12, 1987 your Committee on Small Business issued its report entitled, Survey of the Graduates of the Small Business Administration Section 8(a) Minority Business Development Program. This survey was catalyzed, in part, by the concerns raised subsequent to the full implementation of the PL 96-481 regulations. In fact, three times as many 8(a) firms graduated from the program in the 4 years following PL 96-481 as had been graduated in the decade preceding the enactment of this law. Several of the major findings of the Senate Survey provide useful reference:

- 1) The Fixed Program Participation Term (FPPT) should be increased to allow each firm sufficient time to become

independently competitive; that is, to build a business base, improve its management structure, and replace sole source contracts with similar ones in size and profitability. The FPPT extension should be granted on the basis of all of these factors, not just the subjective judgment of the regional administrator.

- 2) Most respondents felt the program should be based on the firm's development, rather than a number of years criterion.
- 3) SBA must insist before certification that a business plan be developed with each firm that sets forth realistic and attainable objectives.
- 4) SBA should institute a transitional or phase-out program which gradually reduces a firm's dependence on 8(a) contracts and provides the expertise needed to aid firms in marketing the private sector.
- 5) Procuring agencies should be required to adhere to minority business procurement goals and the sub-contracting provisions of Public Law 95-507 should be enforced.
- 6) SBA should have more authority to select contracts from procuring agencies for 8(a) firms in fulfillment of the mandate in Public Law 95-507.

- 7) An 8(a) firm should compete with other 8(a) firms for contracts during its last year in the program.
- 8) Many firms reported that they exited the program without receiving the transitional benefits suggested by the memorandum of understanding between the SBA and the MBDA.

PROGRAM ELIGIBILITY AND PARTICIPATION

The Senate Survey was distributed to 461 firms that graduated from the 8(a) program between the spring of 1982 and early 1986. This resulted in 177 responses from these PL 96-481 catalyzed graduates. Their average tenure in the program was 9 years, but they collectively proposed a 10-year program. The first two of the referenced findings state the case for the length of Program Participation. The Senate's choice of 8 years is more than justified by these findings. The same could be said for 9 years (HR 1807).

We respectfully recommend that paragraph (G)(iii) of Section 203 (Graduation Standards) is a termination standard and should be either regarded as included within Section 204(H)(i)(I) or be relocated to Section 204, Termination (Attachment A codifies the latter choice). Moreover, we note that the current language contained in Section 204 raises several due process questions, which might be addressed if an amendment in the nature of a substitute is contemplated by the Committee.

The Challenging Eligibility Section (205) provides other interested parties the requisite standing to protest. It is instructive to note that in a recent letter from Congressmen Aspin and Mavroules to Secretary Taft, the congressmen agreed with DoD's draft rule (PL 99-661, Section 1207 Set-Asides), which restricts SDB protests to offerors responding to the same solicitation and to the SBA.

THE PROGRAM'S BUSINESS DEVELOPMENT ASPECTS

Our BCPNE 8(a) constituents have all been required to submit business plans prior to certification as a member of the 8(a) portfolio. Moreover, you will note that the third major finding of the survey presupposes or at least suggests the same initial conditions. Thus, as a group we are puzzled by the Section 301(D)(i) suggestion that the business plan would be submitted to the Business Opportunity Specialist (BOS) after certification. We hope you did not intend a procedural change.

The bid and proposal cost amendment is a laudable enhancement. It is important to remember that this revolving fund's primary purpose is to assist the newer firms in the portfolio. Based on the assumptions of an even distribution of the 3,000 firms and a \$10,000 grant per participant, fully 1/3 of the target firms could be recipients. Such a competitive bid and proposal fund will go a long way to accomplish the fourth referenced major finding. Of course, the 50 percent refund would

serve to widen the resource for both the newer firms (1 - 4 years) and those which miss their Competitive Contract Mix goals.

BUSINESS DEVELOPMENT VIA FEDERAL CONTRACTING

Our constituents have reviewed the putative provisions in both S. 1993 and HR 1807 relative to business mix emphasizing competitive contracts. In short, we strongly prefer the two gate (5th and 9th year) scenario of HR 1807. Several fiscal years ago the Congress requested DoD and the SBA to explore the feasibility of competition within the 8(a) program. The DoD report, sent to both Chambers of Congress, strongly urged that the introduction of competition be handled very carefully and emphasized the importance of limiting such competition to firms having attained comparable criteria of competitiveness. This caution addresses intra-portfolio competition only. However, that caveat empty by the major provider of 8(a) business is all the more compelling in the more competitive arenas of full and open competition, with or without exclusion of sources. The fifth referenced finding clearly imports the BCPNE view of the marketplace. Though portfolio reliance can be placed on competitive awards, agencies have not been required to adhere to goals. Moreover, the subcontracting promise of PL 95-507 was aptly described by one articulate survey respondent as, inter alia, the greatest shame of all. In the totality of these circumstances, it would be challenging to predict sales with mathematical certainty. The beforementioned

reasons are compounded when considering procurement lead time and other unforeseen contingencies. BCPNE respectfully adopts the testimony of the Honorable Parren Mitchell before this Committee: "I favor a mix, but would caution that in the commercial world there is still a strong reluctance to utilize minority firms." Perhaps the SBA would be able to provide further assurances if the 8(a) pilot program like survey finding was a truism. However, with the instant fiscal year nearly half over, the President hasn't approved the SBA request to name the Department of Energy as this fiscal year's 8(a) pilot agency. Similar prior fiscal year delays have catalyzed reform legislation in order to provide a reasonable proof of concept time frame.

Our perusal of the Contract Awards Section (403) leaves us with the belief that all regions of the SBA would be operated like Region I. Having experienced that format firsthand we would endorse the provision so long as the language of this section doesn't cause a diminution to but 10 warrants, i.e., only one in each region (Attachment B provides substitute language).

Perhaps as the next to last survey finding suggests, intra-portfolio competition is an idea whose time has come. Thus, triggering mechanisms must be created so to do. BCPNE applauds the normal situation use of the "rule of two" and reluctantly prepares for conference agreement on the one and two million dollar thresholds. However, we are unable to similarly support

the 150% provision. The possibility exists that there is a relationship between the two largest contracts that sound a business volume alarm. However, we regard the SBA as the determining agency as to responsibility of the portfolio firm, just as the Contracting Officer/DCAS make that determination in a competitive ambiance. Thus, we are not motivated to support a provision that catalyzes competition to secure an award that might be pivotal to the success of a portfolio member.

The paragraph (18)(F) Follow-On Contract idea seems to hold promise for graduating 8(a) firms, but we recommend embracing the opportunity to utilize the Section 15(a) small business set-aside, a form of full and open competition. (Attachment C provides suggested language).

THE ANNUAL CONTRACT GOALS AMENDMENT

One prerequisite that is held dear by the smaller businesses of New England is that we regard ourselves as a harmonious, homogenous milieu. Additionally, we strongly favor, as have the White House conferences on Small Business, the setting of goals for participation by small and small disadvantaged businesses. We trust that discrete goals serve best our primary condition precedent. We applaud Senator Weicker's Civil Agency SDB set-aside initiative. It is our reading that the 10-percent goal commences in 1994 (see Attachment D). These goals, if met, will increase competition, perfect the marketplace, and reduce

oligopolistic profits. Once the goals are implemented, Congressional oversight must be maintained for effective results.

CONCLUSIONS AND RECOMMENDATIONS

BCPNE has concluded:

- S. 1993 will strengthen the 8(a) portfolio by removing politics from the program and strengthening the business development aspects of the program.
- If administered properly, The Minority Business Development Program Reform Act of 1987 would go a long way toward preventing further abuse of the program.

BCPNE recommends that the Senate grandfathering provisions become effective on date of enactment and provide a 180-day grace period, thus creating a transition period for the approximately 3,000 extant 8(a) portfolio firms (Attachment E codifies subject recommendation).

Finally, we would like to take this parting opportunity to thank the Committee and its staff for its diligence in following up on the promises made to both the Senate and the portfolio by the SBA and MBDA (formerly OMBE). We sincerely hope that we'll never have to experience again the facts reported by the final referenced survey finding.

Mr. Chairman, this concludes our testimony and I welcome the opportunity to answer any questions that you may have.

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1 “(G) A Program Participant certified as eligible to
2 receive assistance under the authority of this section
3 and eligible to receive contracts under section 8(a) of
4 this Act shall be graduated if such Program Partici-
5 pant—

6 “(i) has been a participant in the Program for
7 the 8-year period prescribed by subparagraph
8 (D)(ii) or (F) of this section,

9 “(ii) has exceeded the applicable size stand-
10 ard established by the Administration pursuant to
11 section 3 of this Act,

12 “(iii) determines that it has achieved its busi-
13 ness goals and objectives as specified in its most
14 recent business plan established pursuant to sec-
15 tion 7(j)(10) (A) and (C) and elects to graduate
16 prior to the expiration of its Program Participa-
17 tion Term. For the purposes of this Act the term
18 “graduated” or “graduation” shall mean the ces-
19 sation of a Program Participant’s eligibility to re-
20 ceive assistance pursuant to this section or for
21 award of a contract under section 8(a) in recogni-

tion of the firm's successful completion of its Program Participation Term."

SEC. 204. TERMINATION.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is further amended by adding at the end thereof the following subparagraphs:

"(H) The Administration, in accordance with clause (iii), may terminate a Program Participant from eligibility for this Program and the program under section 8(a) of this Act based upon good cause if—

"(i) such Program Participant—

"(I) fails to conform to the criteria of eligibility as a small business concern owned and controlled as socially and economically disadvantaged,

"(II) is no longer owned and controlled by socially and economically disadvantaged individuals, as the result of a sale of securities to the public,

"(III) has a consistent pattern of delinquent performance or termination for default with respect to contracts awarded under the authority of section 8(a) of this Act,

"(IV) has a consistent pattern of failing to make required submissions or responses to the Administration in a timely manner,

"(V) is debarred by any contracting agency pursuant to the Federal Acquisition Regulation (48 CFR 9.4), or

1 “(VI) violates rules and regulations pro-
2 mulgated by the Administration; or

3 “(ii) any of the owners of such Program Par-
4 ticipant are convicted of embezzlement, theft, for-
5 gery, bribery, falsification or any other offense-
6 indicating a lack of business integrity. For the pur-
7 poses of this Act ‘terminated’ or ‘termination’
8 shall mean the total denial of assistance pursuant
9 to this paragraph or section 8(a) prior to gradua-
10 tion (as described in subparagraph (G)) or prior to
11 the time prescribed by subparagraph (D)(ii).

12 “(iii) The Director of the Division of Minori-
13 ty Small Business Certification may initiate a ter-
14 mination action by recommending such action to
15 the Associate Administrator for Minority Small
16 Business Capital Ownership Development. When-
17 ever the Associate Administrator deems such ter-
18 mination is appropriate, the Program Participant
19 shall be provided a written notice of intent to ter-
20 minate, specifying the reasons for such action. No
21 Program Participant shall be terminated from the
22 Program without first being afforded a hearing on
23 the record in accordance with section 8(a)(9) of
24 this Act. The Administration shall conduct such
25 hearing within 120 days of the Program Partici-

1 “(C)(i) except as provided in clause (ii), the Assistant
2 Regional Administrator for Minority Small Business and
3 Capital Ownership Development in each of the regional of-
4 fices shall be the manual approval authority for each
5 contract awarded within the region to a Program Participant
6 under this section.

7 “(ii) Awards shall be made by the Assistant Regional
8 Administrator to the Program Participant selected by—

9 “(I) the contracting officer of the agency offering
10 the contracting opportunity to the Administrator, after a
11 restricted competition conducted under the authority of
12 subparagraph (E) of this section; or

13 “(II) the Assistant Regional Administrator for M-
14 inority Small Business and Capital Ownership
15 Development, if the contracting opportunity is being
16 awarded noncompetitively and designation of the
17 Program Participant to receive the contract has been
18 made at the Administration's headquarters.

19 “(D)(i) Except as provided in clause (ii), a Program
20 Participant shall be ineligible for the award of a contract on
21 a noncompetitive basis under this section, if the expected
22 award price of such contract exceeds by more than 150 per-
23 cent the total contract price paid to the Program Participant
24 for performance of its largest prior contract.

1 Participants even if the anticipated award price is not
2 expected to exceed the dollar amounts specified in clause
3 (i)(II) and (III).

4 “(F) A contract requirement being fulfilled through a
5 contract awarded to a Program Participant under this
6 section, may next be fulfilled through a contract solicited
7 and awarded after full and open competition, if—

8 “(i) at the expected time of contract solicitation
9 - the incumbent contractor will be a graduate of the Mi-
10 nority Small Business and Capital Ownership Develop-
11 ment Program;

12 “(ii) such contractor requests that the next contract
13 opportunity be solicited as a small business set-aside;
14 and

15 “(iii) the agency head, or a designee of such offi-
16 cer, approves the request of such contractor.”.

17 **SEC. 404. CONTRACT PERFORMANCE.**

18 Section 8(a) of the Small Business Act (15 U.S.C.
19 637(a)) is further amended by adding at the end thereof the
20 following new paragraphs:

21 “(19)(A) Subject to the provisions of subparagraph (B),
22 a small business concern awarded a contract under this sec-
23 tion during the term of its participation in the Minority Small
24 Business and Capital Ownership Development Program shall
25 complete performance of the contract (including any addition-

1 **TITLE VI-OTHER ADMENDMENTS**

2 **SEC. 601. ANNUAL CONTRACTING GOALS.**

3 Section 15(g) of the Small Business Act (15 U.S.C.
4 644(g)) is amended-

5 (1) by striking out "The head" and inserting in
6 lieu thereof "(2) The head",

7 (2) by redesignating paragraphs (1) and (2) as sub-
8 paragraphs (A) and (B), respectively, and

9 (3) by adding at the beginning thereof the follow-
10 ing new paragraph:

11 "(1) The President shall annually establish goals for
12 procurement contracts awarded to small business concerns
13 and small business concerns owned and controlled by socially
14 and economically disadvantaged individuals. The goal for
15 participation by small business concerns shall be established
16 at not less than 20 percent of the total value of procurement
17 contracting for fiscal year 1989 through fiscal year 1993 and
18 at 25 percent for fiscal year 1994 and for each fiscal year
19 thereafter. The goal for participation by small business con-
20 cerns owned and controlled by socially and economically dis-
21 advantaged individuals shall be established at not less than 5
22 percent of the total value of procurement contracting for
23 fiscal year 1989 through fiscal year 1993 and at 10 percent
24 for fiscal year 1994 and for each fiscal year thereafter. In
25 calculating whether the Government-wide goal for participa-

1 or other change which could impair continued Program
2 eligibility;

3 “(v) initiate termination proceedings with respect
4 to a Program Participant deemed to have met one or
5 more of the grounds for termination set forth in para-
6 graph 10(H) of this section; and

7 “(vi) consider all protests regarding a small busi-
8 ness concerns status as a small business concern owned
9 and controlled by socially and economically disadvan-
10 tagged individuals for the purpose of eligibility to par-
11 ticipate in the various programs authorized by this Act
12 or section 1207 of Public Law 99-661.”.

13 **SEC. 202. CERTIFICATION AND ELIGIBILITY.**

14 (a) Section 7(j)(10) of the Small Business Act (15
15 U.S.C. 636(j)(10)) is amended by adding at the end thereof
16 the following new subparagraphs:

17 “(D)(i) The Associate Administrator for Minority
18 Small Business and Capital Ownership Development
19 shall consider applications received from the Director of
20 the Division of Minority Small Business Certification
21 and issue a certificate as a Program Participant to a small
22 business concern owned and controlled by socially and
23 economically disadvantaged individuals as deter-
24 mined in accordance with paragraphs (4), (5), (6) and

1 a reconsideration within 30 days of receipt of such
2 notice of denial. The applicant may make a written re-
3 quest for reconsideration, including therein information
4 and documentation not previously provided, specifically
5 rebutting the basis on which denial was made. If upon
6 reconsideration, the application is again denied, no new
7 application may be accepted for a period of one year
8 from the date of Associate Administrator's action on
9 such request for reconsideration.

10 "(iv) The Associate Administrator in conjunction
11 with the Director shall develop procedures and guide-
12 lines to minimize the paperwork and reduce the time
13 associated with the certification process, in accordance
14 with clause (ii).

15 (b) Section 7(j)(10) of the Small Business Act (15
16 U.S.C. 636(j)(10)) is amended by adding at the end thereof
17 the following new subparagraph:

18 "(F)(i) Any small business concern participating
19 in the Program authorized under this section and
20 eligible for award of contracts under the authority of
21 section 8(a) on the effective date of this section shall be
22 deemed to be a Program Participant.

23 "(ii) Such Program Participant may continue in
24 the Program for a period of time which is the greater
25 of-

26 "(I) 8 years less the number of years since the
27 award of such Program Participant's first con-
28 tract under section 8(a), or

1 “(II) the unexpired portion of its Program
2 Participant Term established in accordance with
3 section 7(j)(10) of the Act.

4 “(III) 180 days after the effective date of this
5 section.

6 “(iii) This section shall not be deemed to create
7 any Program eligibility for a small business concern
8 owned and controlled by socially and economically
9 disadvantaged individuals, if prior to the effective date
10 of this section such firm was—

11 “(I) graduated from the Minority Small Bus-
12 iness and Capital Ownership Development Pro-
13 gram by the expiration of its Program Participa-
14 tion Term,

15 “(II) terminated for cause from participation
16 in the Program authorized by this section or for
17 award of a contract under the authority of section
18 8(a), or

19 “(III) deemed otherwise ineligible to receive
20 assistance authorized under this section or for the
21 award of a contract under the authority of section
22 8(a).”.

23 SEC. 203. GRADUATION STANDARDS.

24 Section 7(j)(10) of the Small Business Act (15 U.S.C.
25 636(j)(10)) is further amended by adding at the end thereof
26 the following new subparagraph:

1 personnel to carry out the provisions and purpose of sections
2 201 and 501(b) of this Act.

3 SEC. 701. EFFECTIVE DATE.

4 The amendments made by this Act shall become
5 effective within 180 days after the date of the enactment of
6 this Act, except that section 202(b) of this Act shall become
7 effective on the date of enactment.

Senator KERRY. Thank you very much, Dr. Daniels.
Dr. Velez.

**STATEMENT OF DR. C.E. VELEZ, PH.D., PRESIDENT, COMPUTER
TECHNOLOGY ASSOCIATES, INC., ENGLEWOOD, CO**

Dr. VELEZ. Thank you. It is an honor to be here.

My firm is Computer Technology Associates and we have been in the program since 1981, 2 years after CTA's founding. And I would like to share with you some of the experiences I have had over the last 7 years.

The biggest issue, I think, before us is the notion of competition and what to do with it. My recommendation is that the legislation totally eliminate the notion of sole-sourcing for the procurement process of an 8(a) Program. I say that for several reasons.

First, I think *de facto* I have never gotten an 8(a) contract without competing. It is never formal, it is never recognized but it is there. It is there because people market, people go out and give presentations, people develop strategies. However, because it is informal, I believe it is never really recognized as, in fact, competition.

I also believe that instead of a sole-source method that involves thresholds, we need to have an effective tool program, a program where a contractor can get an appeal right when a contracting officer says there aren't two 8(a) contractors out there who can do this job at a fair price. Right now that tool is not available to the community.

If a contracting officer makes a determination on the availability of two or more contractors, the "two rule" notion, there isn't really an adequate process for challenging that determination.

I believe that if it is to eliminate the sole-source method, the program must also support adequate development of embryonic firms. To this end, I have outlined in this testimony a two-stage process of competition. The first stage of this process is for companies that are perhaps in the embryonic stage, during their first 2 or 3 years of business. These companies would have the requirement of competing on a technical basis only for contracts under \$2 million, and full competition for contracts over this threshold. This, by the way, has been used by some of the companies already. The second stage applies to companies that are more mature. These companies go through full technical and cost competition for all contracts.

By implementing a two-stage process of competition, we would have a situation where all 8(a) contracts are awarded on the basis of merit, and the merit can be technical or technical and cost. But contracts would not be awarded on the basis of any political influence or inside contacts or whatever.

One would ask: Why do that? Why put competition into all levels of the program? I think right now the potential for abuse remains in the sole-source program. Even though the thresholds are set low—I think \$2 million for most contracts, in terms of where you would put the line between competing and noncompeting—that even this low-threshold is an attractive sole-source market for people that will sell influence and abuse the system.

A seed contract is very valuable to a new 8(a) contract. A seed contract is typically the doorway to a larger contract. I think in many ways having a threshold of this type would really eliminate the abuses you are seeing.

On the issue of 8(a) and non8(a) mix, I agree with most of my colleagues who have said that it probably isn't a workable solution. You cannot really predict contracts; the environment is very unpredictable.

I would recommend instead that there be a notion where contractors are required to submit bids, competitive bids, non8(a) competitive bids meeting strict criteria and that contractors have the requirement of winning some percentage of those competitive bids in order to be maintained in the program.

To be successful, in a program like this, companies must get feedback from agencies. I think you actually have to have legislation that would mandate that people who buy services or products from the community actually provide feedback, meaningful rational feedback for a person who wins or loses. Through this process the competitors would have an advantage of understanding when they are getting better and the SBA would also have a measure of progress for its competitive viability.

I think one of the most important elements of this program which will certainly help my firm a lot is the notion of a program transition element where you would graduate or could graduate 8(a) contracts with 8(a) firms.

One of the most valuable things an 8(a) graduate can have is the opportunity to compete for the business in which it has a proven track record. I would strengthen that notion by requiring that the Government "graduate" 8(a) contracts along with performing 8(a) firms; that is, that full and open competition opportunities be afforded to graduates regarding the contracts they are performing upon graduation. I think that most agencies are going to resist graduating 8(a) contracts with 8(a) firms. Agencies will resist this graduation because it will reduce the amount of 8(a) business in their portfolios and will therefore require the agencies to generate new 8(a) opportunities in order to meet their 8(a) goals.

At the same time, I think it defeats the purpose of the program if you deny graduating 8(a) contractors the opportunity to compete in an open and competitive way for the business in which they have a track record, which is the business they are most likely to succeed in getting as a follow-on effort.

Finally, on the notion of contract performance after graduation, I think I understand the concern that section 404(20)(A) seeks to address. But, in my view, you have to balance interests.

If you ask most people in the investment community: What's the purpose of business? They will tell you it is to create value and that people who have value at a certain stage in their development will use it in their future prospects to raise capital, to acquire talent and in a variety of ways through equity sharing.

I think that the acquisition of equity—the creation of value and the flexibility to invest current value or ownership for future return—is an incentive also for people to go out and compete. And I think you would be defeating that very principle of business by

enacting legislation which devalues 8(a) contracts and backlog and future income earnings. I don't think you intended to do that.

My view is that if, in fact, all 8(a) contracts were awarded competitively, then there would be no difference between this program and a program where you have small businesses competing in the small business set-aside market and then selling their companies or SBIR Program participants developing technology and selling their companies. This in fact, is even encouraged in the Phase III elements of that program.

So I think you must strive to create a situation where companies are totally competitive, where you desire to maintain the value system, and keep it intact.

Finally, I think that in general, that S. 1993 is great. Everything I read about S. 1993, convinces me that the legislation is moving in the right direction. And I commend the Committee for coming up with a program whose time has come. And I would be delighted to give you more details than I have had the opportunity to do at this point. Glad to have met you.

[The prepared statement of Dr. Velez follows:]

Statement of

C.E. (Tom) Velez, Ph.D.
President and Chief Executive Officer
Computer Technology Associates, Inc.

to the

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

on

S. 1993

February 25, 1988

TESTIMONY ON S. 1993 BEFORE THE COMMITTEE ON SMALL
BUSINESS UNITED STATES SENATE, WASHINGTON, D.C.
ON THURSDAY, FEBRUARY 25, 1988

Submitted by: C.E. (Tom) Velez, Ph.D.
President and Chief Executive Officer
Computer Technology Associates, Inc.

Senator Kerry and Members of the Committee:

It is an honor for me to be here. I commend you on the results of your collective efforts as embodied in S. 1993, and would like to offer some recommendations based on my experience which could further strengthen this legislation.

My firm, Computer Technology Associates, Inc. (CTA), received its 8(a) status in 1981 -- two years after its founding. Over the nine years of CTA's existence, it has established itself as a credible aerospace engineering firm with some of the nation's most demanding government clients: NASA, the FAA, and the DoD. Since inception, we have been awarded and have successfully completed more than 255 contracts, 69% of which were non-8(a).

In most cases, our 8(a) awards were based on self-marketing efforts and technical merit; i.e., we either competed with other 8(a) firms, or were selected to perform under an unsolicited proposal generated by our technical staff, submitted directly to the government or to a large prime contractor.

We are currently scheduled to "graduate" from the program in March of 1989. I am confident that our transition to the competitive marketplace will be successful, but it will take exceptional effort, resources, focus, and luck. I fear that many

companies in a similar situation will fail for lack of proven competitive skills and experience.

I have several specific comments and recommendations regarding S. 1993 that I respectfully submit for consideration at this time.

Competition. I strongly recommend that the legislation eliminate entirely the sole-source method of 8(a) procurement, and establish instead, an effective "rule of two" procedure for the 8(a) program. It is only through this change that we will eliminate the root cause of prior abuses, squarely address the issue of preparation for graduation by our companies in the open marketplace, and promote fair market pricing by our firms.

To assure adequate opportunities for smaller companies in embryonic stages of development, I would suggest two types of competition: For firms within the first three years in the program, I would hold "technical only" competitions for contracts under \$2 million, and full competition for contracts over this threshold. For firms beyond their first three years in the program, I would require full technical and cost competition for all contracts. This would insure that all 8(a) contract dollars are awarded according to merit (technical and/or cost) rather than on the basis of improper political influence or inside "contracts".

It is my opinion that the current measure which provides for competition for only those contracts which exceed a certain threshold limit will not effectively address the source of prior abuses. What is a small "seed" contract worth to a small growing

8(a) company? Clearly such contracts are very valuable to such companies; therefore, a sole source market subject to influence, inside contacts, etc., will not effectively deter the practices we all seek to eliminate.

In response to concerns voiced by many that a fully competitive 8(a) program might be too challenging for young minority companies, I would submit that small, competent, qualified companies will compete effectively in a market against other 8(a) companies of similar size, and that SIC code controls can be used to achieve this effect. In my opinion, those that cannot compete effectively in this limited market eventually will not succeed in any event.

In summary, on the issue of competition, we cannot continue to produce "sole-source dependent" companies which lack experience and training in the competitive procurement process. In my opinion, allowing companies to operate in a sole-source environment for any length of time is counterproductive to the goal of competitive business development.

Contract Availability/Allocation. A major issue that needs to be addressed is the availability of adequate contract dollars to support competitions of this type. An effective "rule of two" program must allow for adequate review and appeal of negative determinations by contracting officers that two or more 8(a) companies do not exist which are capable of performing a given program at a fair market price. It is important to recognize that in today's marketplace most contracting officers resist 8(a) set-asides. The roots of this resistance are: (a) the sole-source nature of the 8(a) procurement process; and (b) the perceived risks

of small business involvement in important programs. My recommendation to eliminate sole source from the program should help create new opportunities by removing one of these major factors.

On the issue of 8(a) contract allocation, the fact that the top 50 8(a) firms receive 35% of the 8(a) business as reported by the GAO is not surprising -- the 8(a) market is de facto a competitive free market: In any event, contracts will go to the most capable firms which most aggressively market their capabilities.

For example, it has been estimated that the top 100 firms which do business with the DOD perform 68% of this agency's business -- and, there are at least 25,000 firms which deal with the DOD!

If we continue to view this as a "problem," I would suggest that the SBA be given the authority to select requirements from the procuring agencies and be mandated to equitable distribution. Adding competition to the 8(a) program as envisioned by S. 1993 will not, of itself, "solve" this problem.

8(a)/non-8(a) Mix. I strongly support the spirit of the requirement in S. 1993 that 8(a) firms develop an increasing amount of non-8(a) business as they progress through the program. However, I agree with those who have suggested that the provisions which specify targets of 8(a)/non-8(a) business mix over specific periods of time is not workable. I would recommend, instead, that the firm be required to submit an increasing number of non-8(a) competitive proposals meeting certain strict criteria, and be required to show progress toward winning a certain percentage of these proposals over a period of time. For example, it might be

required that during the first three years of a firm's participation in the 8(a) program, a minimum number of proposals within the approved SIC codes both for 8(a) and non-8(a) business be submitted, and that a certain fraction of these proposals be won.

To be effective, such a program would require legislation mandating that procuring agencies provide feedback detailing the rationale for the firm's win or loss. Those of you familiar with the procurement process know that, in general, this level of feedback is not available in the open marketplace. This information is essential if firms are to achieve competitive viability over a period of eight or less years. Such rationale would also serve as convincing evidence to the SBA and to the company of its progress in achieving competitive viability.

Business Development Assistance. The proposed legislation providing for a bid and proposal (B&P) fund of \$5 million should be eliminated. I do not believe that any fixed amount of money in a fund of this type would make a meaningful contribution to the actual costs of marketing and bidding programs, and would result in an administrative nightmare. (In my industry, it is estimated that an effective proposal costs approximately 5% of the contract value and that less than 50% of submitted proposals are won.) Most importantly, from the outset of a business, firms must learn how to write competitive proposals and how to pay for them. For example, the Federal Acquisition Regulations (FARs), provide for allowable B&P costs and should be included in the cost model of all firms. On the other hand, the SBA should provide competent training on how to fund proposals internally,

and how to develop competitive proposals.

Program Transition. An important transition vehicle from the 8(a) to the non-8(a) arena for mature companies is contained in Section 403(F) of S. 1993. I would enhance this section by modifying it to require that the government "graduate" 8(a) contracts along with performing 8(a) firms; i.e., that full and open competition opportunities be afforded to graduates regarding the contracts they are performing upon graduation. I share the belief, along with others, that the only chance many companies will have beyond the 8(a) program to maintain the workforce and morale of their companies, is the opportunity to compete for the follow-on work in a market where they have an established "track record." This, of course, will reduce the amount of 8(a) business in a given agency's portfolio and therefore will demand the generation of new 8(a) opportunities. On the other hand, by denying a graduating company the opportunity to compete for work which it probably self-marketed into the 8(a) program to start with, eliminates a qualified proven competitor from the procuring agency (possibly to its detriment), and opposes the overall objective of maximizing the number of competitive concerns that exit the program.

Control of Growth. The proposed legislation limits the size of an award on a non-competitive basis to 150% of the total contract price previously awarded to a firm. This clause is arbitrary and detrimental to business development, particularly to a rapid growth start-up. In my industry, many companies (including most successful non-8(a) companies), have grown at a rate that is

driven by the market -- well over the 150% threshold. Should we also put a cap on non-8(a) sole source procurements? If not, why not?

I cannot see how such a threshold would be effective in stopping any abuse or in supporting business development. Since I am proposing a totally competitive 8(a) program, this would be a moot point if my proposal were accepted.

Contract Performance After Graduation Section 404(20)(A).

The requirement that an 8(a) award must be performed by the socially and economically disadvantaged small business concern that initially received such contract will severely limit a graduated firm's capital raising capability and severely reduce its free market value. This provision also appears to discriminate against 8(a) companies. On the other hand, I understand the concern and abuse this section seeks to address. In my view, one must balance interests: business development must have as its primary goal, the creation of value and the flexibility to invest current value or ownership for future return -- the basic tenet of our free enterprise system. The most precious resource any business owner has in developing its business is the future value of its equity, which could be used either to raise capital or attract and retain talent. I do not believe it is your intention to deny a minority business owner this critical element of business development resource.

I would suggest that if all of the business obtained by an 8(a) firm were obtained competitively (even in a limited market),

this provision could be eliminated without compromise of our key values. In effect, the situation would be no different than any small business which had successfully competed in the small business set-aside market, and had subsequently sold some or all of its business to further its future interests -- a common model in today's era of acquisition and mergers.

In closing, in a free market, the market should dominate growth and success -- not regulations. The 8(a) program is a vehicle which should effectively support (not guarantee) the development of minority-owned businesses in the nation by giving minority entrepreneurs the opportunity to succeed while maintaining the highest standards of conduct demanded by our society. I believe that S. 1993, with the inclusion of these recommendations, will further the achievement of this important national goal.

Senator KERRY. We appreciate your testimony very much.

We have been joined by Senator Mikulski from Maryland. Senator, do you have any opening comment you want to make or wait for questioning?

**STATEMENT OF HON. BARBARA A. MIKULSKI, A U.S. SENATOR
FROM THE STATE OF MARYLAND**

Senator MIKULSKI. Mr. Chairman, I am happy to wait for questioning but we want to certainly welcome the participants.

Mr. Chairman, I have to comment as I look out in the room, I am heartened by this profile of American business. For years I have sat in congressional hearings in the House and in the Senate and this has been the most significant representation of America that I have been to, so I am just happy to look out in the room.

Dr. DANIELS. We like looking that way. [Laughter.]

Senator KERRY. We are happy you are here to look out in the room, Senator. Thank you all for your testimony.

You bring a variation of views and it is important, obviously, to try to get a mix on it. And, Ms. Santiago, you have been very helpful to us from earlier on in developing it and I want to thank you for that. This has been the first time we have had a chance to hear your experience.

I want to pick up very quickly with you, Dr. Velez, and come back. You have advocated eliminating the sole-source method for the 8(a) contract completely.

But your company existed, you were already there. And you had 2 years under your belt and so you came in, you had the ability to move elsewhere.

What happens, given the purpose of this program, the whole notion of a business development program that is geared towards the remedying of a number of different barriers that resist that, you overcame some of those barriers on your own, but I think given current economic conditions in the country and current landscape that we are looking at, do you think that that might be overly restricted, that we would be eliminating some of the essential purpose here or not?

Dr. VELEZ. I think there are two problems with selling. One of them is what you have to sell and the other is who you are. And you have to have something to sell and I think that that's the element of success that will carry a business beyond graduation, beyond the 8 years or whatever. I think there has to be an idea concept.

I believe that those concepts don't discriminate. I believe they are there in the minority community. My challenge is to companies that are embryonic to compete with peers strictly on technical merit, on management merit and not on cost merit. We know bigger companies will tend to dominate the market given the free reign of the market, so I believe that there could be protective mechanisms which on one hand shine on the notion of technical quality and ingenuity, innovation in an industry, and at the same time, normalize out some of the disadvantages that minority firms have today in the United States.

Senator KERRY. In your experience did you find that because you were a minority-owned business that you had a harder time getting just taken seriously by Government procurement agencies?

Dr. VELEZ. I think that is true. We have two problems as a minority small business. One is that minority denotes small. I think both minority and small tend to have the connotation of higher risk in the minds of Government procurement officers. The Government buyer wants a low risk, secure position with a supplier. If he sees any risk of any sort or perceives that his choice might lead to catastrophe, that the job might not get done properly or whatever, his tendency will be to go for the most secure, reliable, proven supplier. That proven supplier is just not a minority coming in the door with a small company behind him. So it is tough.

Senator KERRY. I am not sure whether you mentioned it, I don't think you did. Did you comment on the 150 percent?

Dr. VELEZ. Again, first of all, I think that the market should dominate growth. There are so many companies in my industry that have grown so much faster than 150 percent a year. I think the Congress should not legislate how fast the company should grow but the market should.

Senator KERRY. Basically I agree with you in sort of macroeconomic terms looking at a company you shouldn't, but given the nature of this program, shouldn't the incubational aspects of this program restrict the growth that it gives automatically, so that it can spread the wealth a little more? And if there is going to be growth, let the growth be on the mix side, on the non8(a) piece?

Dr. VELEZ. In that question there is a dynamic that I think I need to make clearer. In my experience, anyway, the program isn't one where anybody gets anything. The program is where one goes out and gets something and then the process is in place for that person to be awarded a contract.

In my experience, the only way contracts come to an 8(a) firm is through self-marketed initiative. So there is no bag of posh rags waiting to be handed out to the next needy guy. In fact, that's why I am not surprised at all about the fact that a few firms get most of the business.

I think in my testimony I cited the DOD situation, the top 100 firms get 68 percent of the business. There are 25,000 firms in DOD. So, why did that happen? Not because the Federal Government is biased to larger firms. It is the way the market actually is driven by a talent industry and a few people that succeed.

So I think that, first of all, if the program were totally competitive, the 150 percent rule which applies only to noncompetitive procurements wouldn't even be necessary. And I think that making the program totally competitive would also simplify this legislation quite a bit. But, you know, whether it should be 150 percent or some other number, I think is arbitrary, unless you were to give the SBA authority to select procurements and really have access as a State agency with discretion to then provide procurements to the various companies and meter them out at a certain rate, which is nominal or effective. But that's not the way it is today. That's not the market.

And I don't think that the procuring agencies will allow it because they don't have and the SBA does not have the capability to

select qualified people that can meet the technical requirements or procurements. They just don't have the people today to do it.

Senator KERRY. I see you wanting to comment on that, Dr. Daniels, or are you just restless in your chair?

Dr. DANIELS. I didn't recognize Dr. Velez when he sat down but I am very familiar with his firm, a very strong competitive firm, stronger than our firm. And I think what we experience, even though we have never met each other, is important here; namely, he pretty much gobbles me up; I pretty much gobble up the guys behind me.

And I think there are a variety of things that come from this knowledge. I think, first of all, perhaps it makes both of us more likely to make the kind of argument that Dr. Velez made. I would caution him about the argument that we don't want a mix of non-competitive. I think it is the case that the very basic purpose that I argue for, namely, the incubation, is a necessary, safe harbor.

I think I can look back to a time when I would not even feel comfortable making the statement that he made but I understand it better now because I think I could survive in a competitive marketplace.

But I think 150 percent is the one that really made me fidgety because I think he has given you some important insights into how the procurement ambience operates. I think you would be surprised to find out what would happen with the 150 percent rule.

Note that the 150 percent rule says that if you have a \$300,000 contract and the biggest contract the company had before was \$200,000, you can't get it without competing. But, note, a larger firm can get it without competing, a firm that has had million dollar contracts.

What you would see the procurement ambience do is they would pick the contract. You really would not get the intended result.

Senator KERRY. That's an interesting perception.

Dr. VELEZ. There is one thing that has happened and that is important to read, namely SIC coded controls. If SIC codes were properly utilized, what you would have is small companies competing with small companies, and so on. I don't think you have to have a situation where big 8(a) firms and big guys are always going to win the dollars. I think there is a way to normalize that effect out by having SIC codes that are, in fact, getting to size standards.

And I also believe that by having technical competitions, you are only recognizing what you already do. I think that most 8(a) companies today get a contract through some form of informal competition. Let's normalize it and let's give those companies—who don't win feedback.

What is missing now in the informal process is feedback. Under the formal competition rules, when you lose a competition, you are not told why you lose. When you lose an 8(a) competition, you don't get told why you lose. You never get any better because you don't know what mistake you made in not winning.

Senator KERRY. How would two totally nascent companies in contract first effort compete and what would distinguish them?

Dr. VELEZ. Technical merit.

Senator KERRY. What would be proof of merit?

Dr. VELEZ. The same criteria people use today for technical merit on any other basis. Most selection source processes require the development of a criteria, a formal criteria for selection. And a board is only convened to select.

My proposal for the embryonic firms in the first 2 or 3 years of business is that they compete on a technical level only, and that they not have to worry about the lowest cost. Let the companies that are in the more mature stages apply for the technical and cost proposal.

Senator KERRY. Ms. Santiago, do you want to comment any further?

Ms. SANTIAGO. Only to say I agree with his assessment of the way the procurement process works. It has been my experience, we have never had a sole-source contract. We have always had to compete.

It has always been an opportunity that I developed. SBA never came to me and said: Go after these people.

Senator KERRY. What's your mix now?

Ms. SANTIAGO. We are probably 25 percent 8(a) now. We have been preparing for our graduation for a long time and I think we are in a unique situation because of the service that we provide. We are filmmakers and there just aren't that many 8(a) opportunities in that field.

We have always been out there beating the bushes for competitive non-8(a) contracts.

Senator KERRY. Your first contract was exclusively 8(a)?

Ms. SANTIAGO. No, our first contract was competitive. We were in the program two years before we had an 8(a) contract. And it took us that time to develop the one client who gave us the contract and that same client then hired us 3 years in a row to do similar work.

But we have always had to compete outside of the 8(a) Program and we are very often met with a great deal of hostility because the procurement agents and program people felt like something was being pushed down their throat whenever an 8(a) company came to visit.

I am not asking that you protect us from these people, but I think that somehow there has to be some responsibility for the way they deal with us in a competitive or noncompetitive environment, however the law finally reads.

Senator KERRY. Do all of you share the view, I think you touched on this but I want to pin it down, that goals, not requirements, across the board?

Ms. SANTIAGO. Goals, not best efforts. I think there really needs to be some way of knowing what they have done and what 8(a) companies they have given work to. They have to actively pursue us too.

Oftentimes, especially with a newer company, my experience has been in speaking around the country to other 8(a) firms is that many of them don't even know the process of going after Government contracts. And it is a real disservice to allow them into the program without them knowing how to do this because they waste a lot of their time trying to figure out how to do it, and before they know it, their time is up.

And I really think that that is a very important aspect of the program that hasn't been addressed. And I think it is a real disservice not to address it because you are not preparing the people to succeed in the environment you are saying is going to make them succeed.

Senator MIKULSKI. Could I come back to that for a second? I unfortunately have to leave.

One is the legislation before us, as Senator Kerry indicated, says that you have to have so many non-8(a) contracts and essentially mandated that. You say goals but not best efforts.

I know that it is very hard to guarantee an outcome in the marketplace so that to have a fixed mandate, you have to be able to say: Yes, I would be there but you cannot guarantee an outcome but you can guarantee an effort because that's only in your own business self-interest as well. How is that different from a goal?

I am very much interested in essentially mandating a goal that then has provable demonstrative steps that the business has taken to achieve that.

Ms. SANTIAGO. I think when I present a proposal to a prospective client, they are expecting very specific information from me as to how I am supposed to carry out that contract. As a businessperson, have to predict a goal and an outcome before it actually happens. I really don't think the Government is any less capable of doing that.

The reason I think that is important is because, as an anecdote, one of the things I learned when I went marketing the first few years being on the 8(a) Program was that I would be received by anybody. They would be happy to see me and they marketed, talked to 20 8(a) firms that year. But how many contracts came out of that? And I felt like there was a great courtesy and a great welcoming of the 8(a) firms but no money actually resulted.

And I felt like there needed to be some way of ensuring that it was more than the courtesy of the call. That somehow they had to follow through on that courtesy and had to make not just an effort, but meet a real goal. I think they have to go out there and look for us, I really believe that.

I think there is a lot of us out there who don't know how to approach them.

Senator MIKULSKI. Who has to go out to look for who?

Ms. SANTIAGO. Procurement officers and contract people.

Senator MIKULSKI. What you are saying is we have an unhappy convergence now of sometimes inexperienced contractors or even contractors who are so busy producing their product that it is difficult to do the sales with either reluctant, ambivalent, skeptical or even hostile procurement and contracting officers. Is that what you have; is that right?

Ms. SANTIAGO. Yes.

Dr. VELEZ. I want to say, ultimately if you look at what the guy has to look like when he gets out, he has to be a capable competitor. And I am going to quote something somebody told me about teaching a course on the subject. Competition in our business is a life and death struggle. It is a culture. Everybody in the business knows that every guy has to work until Christmas Eve, if necessary, and put that proposal in.

Unless that company has that capability, it is not just training and it is not just knowing what is put into the right boxes but fundamentally it is a culture. If he doesn't start developing that from day 1, he is not going to get anything.

Dr. DANIELS. Senator, I would like to go back to, first of all, the contract mix where there are goals. I have and I think our constituency really supports the two gate notion of looking at 5 years and going out the back side of the program. That is 35 percent the first time, roughly 10 percent growth each year, 75 percent at the back side.

That's a goal. That one might be argued for best efforts but, as you have already indicated, you are basically looking at perhaps a 5 percent slip-off of that goal and still not finding that to be reason to drop the company out of the portfolio.

But on the other notion, namely the small business 15(a) set-aside goals, and the 8(a) goals in the different periods, I think they are 1989 to 1993 and then 1994 on, those, we think, should be goals. And I thought really that was your question, Senator.

Senator KERRY. Ms. Santiago, I would like to ask you, in your testimony you suggested to us that the fixed participation term of 8 years is something of a problem and that there is some tailoring needed to specific needs of participants.

Can you suggest to us how one might structure that in a way that doesn't just open up Pandora's box to influence and sort of specialized situations and even maybe defeat the notion of incubatehood?

Ms. SANTIAGO. Well, I wonder if there isn't a way of determining, by businesses, a general time that would take a certain business to get established. I am not familiar enough with, you know, construction engineering and some of the other firms but I suspect that there really is a great difference between the time a company gets one contract. Sometimes if they are a small company, they are busy working on the contract one year and it takes them a year before they can market it.

Senator KERRY. I take it you might also be suggesting that certain types of industries have certain stronger resistance to minority participation than others?

Ms. SANTIAGO. Yes.

Senator KERRY. Is that demonstrable?

Ms. SANTIAGO. I think in the United States anything is demonstrable.

Senator KERRY. I know it is demonstrable anywhere but can you distinguish—

Ms. SANTIAGO. I think you have enough experience with the 8(a) Program to arrive at a determination that is fair, and I really strongly believe that you can do it and that there should be industrial classifications that determine the length, the term of the 8(a) participation.

Senator KERRY. Let me just thank all of you. We have two more panels and we have probably taken longer than I meant to with this first one.

You are all extremely articulate about this and that is why we asked you to be here, but I want to thank you for participating and simply put you on notice that you are not off the hook with your

testimony. We are going to come back and try to work with you and ask you more as we progress here and get into our own legislative efforts on the Committee, but I really want to thank you for participating very, very much.

I hope the record will reflect, while I didn't introduce each of them with their full titles, that the record will reflect that. If we could have Dr. Pan and Julio Jo.

Thank you very much for joining us. We appreciate it. Dr. Pan, if you could start out.

**STATEMENT OF DR. ELIZABETH PAN, PRESIDENT, NATIONAL
FEDERATION OF 8(a) COMPANIES, ARLINGTON, VA**

Dr. PAN. Thank you, Mr. Chairman, Members of the Committee. I am honored to appear before you representing the National Federation of 8(a) Companies. First, a few words about the Federation.

This organization stemmed from the need to communicate among 8(a) firms cutting across the traditional ethnic lines on issues of vital concern to the 8(a) Program. Thus, the Federation includes companies owned by Blacks, Hispanics, Asians, and other individuals defined by SBA as socially and economically disadvantaged.

We do not advocate for the interest of specific firms, and this is a very important point to keep in mind. Instead, we focus on programmatic and legislative issues. So the testimony that I am about to present to you really reflects more than a company's experience or point of view. It attempts to reflect the program across the board.

First, we would like to thank you for your leadership and efforts to improve the 8(a) Program. We want to assure you that we support your objectives. We want a program where our achievements are based on merit—I think this is a theme you have heard from the first panel—rather than on political influence.

We want our businesses to survive after we leave the program and we want a program that is administered effectively and consistently by SBA.

Contrary to popular belief, competition for the larger requirements to a large extent has been a fact of life for 8(a) companies in recent years. However, by formalizing the requirement to compete, there would be an objective basis for the selection of awards and this would hopefully dispel the notion that awards are based on political influence.

Competition within the 8(a) Program would also give 8(a) companies the opportunities to hone the skills that are needed after graduation.

The Federation supports the concept of competition and self-marketing in the 8(a) Program. However, we believe that the use of the 8(a) Program by procuring agencies depends greatly upon the practical advantages that the program offers for accomplishing the work of the agency in a timely and effective manner.

These practical advantages are in the form of shorter and simpler procurement process and the selection of a firm that the agency perceives would perform the contract effectively.

What I am saying here is that if competition is introduced in such a way that removes the practical advantages the program offers the procurement agencies, we would, in effect, hurt what we are trying to protect, the 8(a) Program.

We, therefore, suggest that S. 1993 include provisions for a simplified competitive process with proscribed time frames for 8(a) competition. Such a process is described in our written testimony.

We would also like to suggest that in order to ensure that the competitive process is fair to 8(a) companies and productive to procuring agencies, SBA be required to issue a certificate of eligibility for all firms that compete in a requirement.

This certificate would ensure that a firm has the requisite SIC code, meets the associated size standard, has the financial capability to perform the contract, and so forth, leaving issues of technical and management capabilities in the hands of the procuring agency.

Certifying that firms competing for a requirement are eligible would forestall the possibility that a winner of a competition would be ruled ineligible after the competitive process is completed. This type of circumstance that I am describing here happens today, even though the kind of competition we have today is not as structured or not governed by rules that you are proscribing in S. 1993.

It has happened that an agency competes a requirement on a technical basis and finds SBA awarded it to another company than the one that scored the highest.

Senator KERRY. Why do you think that happens? Do you know?

Dr. PAN. Currently the regulations provide or mandates SBA to keep in mind social objectives. That is to say, they have some legitimate concerns under the existing legislation but they ought to be equitably distributing contract opportunities but you can't meet that type of objective as well as preserve the integrity of the program on a competitive basis. You have got to make a choice.

Now, you have heard testimony from the previous panel that addresses the issue of competition. It is a tough issue but if you have technical competition during the early stages of a firm's entry into the program and then later on cost and technical competition, how do you distinguish when you have a particular requirement that Type A firm and Type B firm want to participate in?

In other words, you have a firm that is 2 years old and you have a firm that is 5 years old. If it is a 5-year-old firm, you have to compete it. If it is a 2-year-old firm, you don't have to compete it. Which one would govern there?

I am very concerned. You know, we have here the cream-of-the-crop and I have talked to companies that are from South Dakota, Wisconsin and Arizona and I am very concerned for them that they have a sufficient period of time to develop and still have some competitive process within the program.

Similarly, a requirement below the competitive threshold that has been marketed by a firm and offered by the agency on behalf of an eligible firm, should not be awarded to another firm because that firm has worked with that agency for as many as 2 years in developing that requirement. That firm has made an investment in that requirement and it is not quite fair for either the firm or the procuring agency that then that contract is awarded elsewhere.

You know, it is rather strange that we are told we ought to be self-marketing and then find that if we do self-marketing, the results of our efforts accrue elsewhere.

While S. 1993 is silent on whether or not competition should include costs, I would like to point out that cost competition would give a significant edge to the larger companies and would, therefore, reinforce the trend toward the concentration of 8(a) dollars in the larger firms.

I am simply being neutral about this. If you do this, this is a consequence.

With respect to the issue of proposed thresholds, we urge you to consider excluding the value of options in determining the size of the requirement since options are uncertain.

The Federation supports the effort to reduce dependency on 8(a) sales while a firm is still in the program by, first, setting goals for non8(a) sales, requiring reasonable effort to meet these goals and document these efforts that they can be verifiable, providing technical assistance to compete for non8(a) sales and providing a transitional market for graduated firms by extending the 5 percent MBE goal across all agencies. Now, you have done that. You have proposed that in the legislation.

However, we would like to propose additional ideas to strengthen this transitional program. One is to further expand the transitional market by specifying a 5 percent MBE goal in the subcontracting provision of P.L. 95-507. Agencies that have used this approach have found it more effective in creating opportunities for MBE participation in large procurements.

As Congressman Parren Mitchell testified before this Committee a few weeks ago, this is particularly important in view of the trend in Government procurement to consolidate requirements.

The contracts are getting too large. We won't qualify for them. So a very viable strategy is for us to qualify as a subcontractor and we have a much better chance of getting the subcontracting piece if there were a 5 percent MBE goal.

The second idea we would like to propose of the strengthening of the transitional program would be to provide an incentive for 8(a) firms to incur the higher costs of non8(a) sales by excluding these sales in determining size eligibility for specific contracts that have a size requirement.

Currently an 8(a) firm has to meet the standard for each contract it markets in the 8(a) and SDB's Program, Small Business Set-Aside Program. It costs less to win an 8(a) contract. There is a trend to target 8(a) contracts rather than SDB or something else.

In order to overcome this, it is proposed that non-8(a) sales be excluded in determining the size of the 8(a) company only for purposes of meeting that contract size eligibility.

This approach is preferable to the approach used in H.R. 1807 where 8(a) companies are allowed to exceed the size standard of a contract by 25 percent. It is better because it serves as a direct incentive to achieve non-8(a) sales.

I think you will have questions to me afterward on that one. Would you like me to further explain that a little bit?

Senator KERRY. You are going to continue, am I right? We will come back.

Dr. PAN. The Federation believes that the three-pronged program, requiring 8(a) firms to document their efforts to obtain non-8(a) sales and providing technical assistance to this end; second, a strong incentive that would overcome the higher cost of non8(a) sales and, third, an expanded and strengthened transitional market, will achieve the purpose you had in mind, which is a mix of 8(a) and non8(a) business.

The provision in S. 1993 that has by far elicited the most heated response from the community is the prohibition of the sale of an 8(a) company. While you don't directly prohibit the sale of an 8(a) company, the provision of cancellation for default of all 8(a) contracts effectively prohibits the sale of the 8(a) company.

This provision is clearly intended to stop the practice of some 8(a) companies of getting fat and selling out. While the Federation is equally against this practice, we are concerned that some legitimate needs of 8(a) companies have not been adequately considered. We, therefore, propose the following additional basis for waivers.

One, if the sale is consistent with the intent of the 8(a) program; that is, it institutionalizes minority business ownership in the economic mainstream, and with this I would like to tell you a little story.

I got a phone call not too long ago from a company who has been successful providing food services in the 8(a) Program. The company is near graduation and has been able to negotiate the purchase of a fast-food franchise which is related to the experience that that person has gained in the 8(a) Program.

The question I was asked is whether this sale of her company would be allowed in order to raise the capital necessary to buy the franchise. Well, under the proposed legislation, it effectively would not be allowed and that person would not be able to raise the capital in that manner to buy a fast-food franchise. Is that the intent of this Committee, to prevent that type of sale?

Second, if a firm is going public as long as controlling interest, defined as the largest single block of stocks, are retained by the minority. Third, if the firm has less than 30 percent of its sales in 8(a) contracts.

I know I have deviated somewhat, so I would like to skip some parts and go to a couple of ideas that are not addressed in the legislation.

The first point concerns provisions in P.L. 99-591 and P.L. 99-661 related to the reduction of the size standards associated with certain SIC codes. These provisions would make 8(a) companies in these industries, and I believe there are four named, ineligible as small business, not only for purposes of procurement but also for the surety bond program and other types of assistance from SBA.

We urge you to adopt Senator Dixon's approach as proposed in S. 1559.

The second point I would like to make is to recommend that S. 1993 support the strengthening of the technical capabilities of an 8(a) company by requiring a phaseout of subcontractors with the concurrence of the buying agency.

Previous legislation has established subcontracting guidelines. These guidelines were intended to ensure that the 8(a) contractor

performs most of the work on a contract, thereby building its technical capability.

By requiring a phaseout of the subcontractor over the life of the contract, the 8(a) company would further strengthen its technical capability. This would also reduce the overall cost to the Government by eliminating double application of the G&A rates from the two companies.

I would like to close this statement by thanking you because I realize that this is a very difficult task that you have to try to integrate the various points of view.

[The prepared statement of Dr. Pan follows:]

TESTIMONY ON S.1993 BEFORE THE SENATE
COMMITTEE ON SMALL BUSINESS

FEBRUARY 25, 1988

Submitted by: Elizabeth Pan
President, National Federation of
8(a) Companies

Chairman Bumpers, Senator Weicker, members of the Committee, I am honored to appear before you representing the National Federation of 8(a) Companies.

The National Federation of 8(a) Companies stemmed from the need to communicate among 8(a) firms cutting across the traditional ethnic lines on issues of vital concern to the 8(a) program. Thus, the Federation includes companies owned by blacks, hispanics, asians and other individuals defined by the Small Business Administration (hereinafter "SBA") as socially and economically disadvantaged. We do not advocate for the interest of specific companies; instead we focus on programmatic and legislative issues. The Federation is entirely supported by the membership fees and is operated by a volunteer staff. Currently our membership includes 53 paid members, and about 300 members affiliated through three regional groups.

We thank you for your leadership and efforts to improve the 8(a) program. We want to assure you that we support your objectives. We want a program where our achievements are based on merit, rather than political influence. We want our businesses to

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survive after we leave the program and we want a program that is administered effectively and consistently by SBA.

We also thank you for giving us this opportunity to share our views with you. For as much as we support your objectives, with respect to some provisions, we would like to suggest for your consideration other ways for achieving them.

Contrary to popular belief, competition for the larger requirements to a large extent has been a fact of life for 8(a) companies in recent years. By formalizing the requirement to compete there would be an objective basis for the selection of awards and this would hopefully dispel the notion that awards are based on political influence. Competition within the 8(a) program would also give 8(a) companies the opportunities to hone the skills that are needed after graduation.

The Federation supports the concepts of competition and self marketing in the 8(a) program. However, we believe that the use of the 8(a) program by procuring agencies depends greatly upon the practical advantages the program offers for accomplishing the work of the agency in a timely and effective manner. These practical advantages are in the form of a shorter and simpler procurement process, and the selection of a firm that the agency perceives would perform the contract effectively.

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We therefore suggest that S.1993 include provisions for a simplified competitive process with prescribed timeframes for 8(a) competition. Such a process is described in our written testimony.

We would also like to suggest that in order to ensure that the competitive process is fair to 8(a) companies and productive to procuring agencies, SBA be required to issue a certificate of eligibility for all firms that compete in a requirement. This certificate would ensure that a firm has the requisite SIC Code, meets the associated size standard, has the financial capability to perform the contract, etc., leaving issues of technical and management capabilities in the hands of the procuring agency. Certifying that firms competing for a requirement are eligible would forestall the possibility that the winner of a competition would be ruled ineligible after the competitive process is completed. If the prescribed competitive process is complied with, SBA should be prohibited from awarding the contract to another firm.

Similarly, a requirement below the competitive threshold that has been marketed by a firm, and offered by the agency on behalf of an eligible firm, should not be awarded to another firm. Only requirements offered to SBA without any firm's name should be "distributed equitably" by SBA. Technical assistance resources should be targeted towards firms that are experiencing

difficulties in self marketing.

While S.1993 is silent on whether or not competition should include costs, it should be pointed out that cost competition would give a significant edge to the larger companies and would therefore reinforce the trend towards the concentration of 8(a) dollars in the larger firms.

With respect to the issue of proposed thresholds, we urge you to consider excluding the value of options in determining the size of the requirement since options are uncertain.

The Federation supports the effort to reduce dependency on 8(a) sales while a firm is still in the program, by: (1) setting goals for non 8(a) sales; (2) requiring reasonable effort to meet these goals; (3) providing technical assistance to compete for non 8(a) sales; and (4) providing a transitional market for graduated firms by extending the 5% Minority Business Enterprise (hereinafter "MBE") goal across all agencies.

In addition to the above, we urge the consideration of the following:

1. Further expand the transitional market by specifying a 5% MBE goal in the subcontracting provision of P.L. 95-507. Agencies that have used this approach have found it more effective in creating opportunities for MBE participation in

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large procurements. As Congressman Parren Mitchell testified a few weeks ago before this Committee this is particularly important in view of the trend in government procurement to consolidate requirements. We believe that a 5% MBE subcontracting goal will have a beneficial impact on minority businesses beyond those participating in the 8(a) program.

2. Provide an incentive for 8(a) firms to incur the higher costs of non 8(a) sales by excluding these sales in determining size eligibility for specific contracts that have a size requirement. Currently an 8(a) firm has to meet the size standard for each contract it markets in the 8(a), and Small and Disadvantaged Business (hereinafter "SDB"). Since it costs less to win an 8(a) contract there is a trend to target 8(a) contracts rather than SDB's. To overcome this, it is proposed that non 8(a) sales be excluded in determining the size of the 8(a) company for purposes of meeting contract size eligibility. This approach is preferable to the approach used in H.R. 1807 where 8(a) companies are allowed to exceed the size standard of a contract by 25% because it serves as an incentive to achieve non 8(a) sales.

The Federation believes that this three-pronged program--requiring 8(a) firms to document their efforts to obtain non 8(a)

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sales and providing technical assistance to this end; a strong incentive that would overcome the higher costs of non 8(a) sales; and an expanded transitional market -- will achieve the purpose you had in mind, a purpose we strongly support.

The provision in S.1993 that has by far the elicited the most heated response from the community is the prohibition of the sale of an 8(a) company. While you don't directly prohibit the sale of a company, the provision of cancellation for default of 8(a) contracts effectively prohibits the sale of the 8(a) company.

This provision is clearly intended to stop the practice of some 8(a) companies of "getting fat and selling out." While the Federation is equally against this practice, we are concerned that some legitimate needs of 8(a) companies have not been adequately considered. We therefore propose the following additional basis for waivers:

1. If the sale is consistent with the intent of the 8(a) program, that is, it institutionalizes minority business ownership in the economic mainstream;
2. If the firm is going public as long as controlling interest, defined as the largest single block of stocks, are retained by the minority; and
3. If the firm has less than 30% of its sales in 8(a) contracts.

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There are many provisions in S.1993 that address SBA's role in administering the 8(a) program. We very much appreciate your efforts to streamline the certification process, depoliticize the agency, and provide for a competent staff and adequate resources to do the job. We appreciate your recognition of the need to collect program data that would document the program's effectiveness and contributions to the economy, as well as improve the management of the program.

Our time here only allows us to highlight certain aspects of S1993. Our written testimony comments on each section of the Bill.

Before I close, I would like to call your attention to two additional points. The first point concerns provisions in PL 99-591 and 99-661 related to the reduction in size standards associated with certain SIC codes. These provisions would make 8(a) companies in these industries ineligible as small business, not only for purposes of procurement, but also for the surety bond program and other types of assistance from SBA. We urge you to adopt Senator Dixon's approach as proposed in S1559.

The second point I would like to make is to recommend that S1993 support the strengthening of the technical capabilities of an 8(a) company by requiring a phase out of subcontractors with the concurrence of the buying agency. Previous legislation has

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established subcontracting guidelines. These guidelines were intended to ensure that the 8(a) contractor performs most of the work on a contract, thereby building its technical capability. By requiring a phase out of the subcontractor(s) over the life of the contract, the 8(a) company would further strengthen its technical capability. This would also reduce the overall cost to the government by eliminating the double application of the G&A rates.

I would like to close this statement by expressing our appreciation of the difficult task you have of achieving a balance of views from various perspectives. We hope we have contributed to this end. Please be assured of our support and assistance in our common goal of a strong 8(a) program for those that come after us.

Senator KERRY. Well, thank you, Dr. Pan. I am not sure the staff thanks you because you have given them a lot of work to do. You have raised a lot of good points and made very good suggestions, some of them complicated and obviously hard to implement the language, but I think very important for us to think about. I appreciate it.

I want to interrupt. I know we have two statements yet to hear but Senator D'Amato has appeared and we all are running difficult schedules around here so I did want to have a chance to turn to him. He and I are getting used to appearing in committees together these days and I am delighted to welcome him.

**STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator D'AMATO. Mr. Chairman, let me tell you once again for the record how much I appreciate the opportunity to work with you in this important and critical area, in terms of seeing to it, as Dr. Pan has put forth, the common goal of a strong 8(a) Program, not only for those who are within that program now, but for those hopefully who will be able to follow.

And I know that is the goal of the Chairman and I want to applaud him for that. This is not an easy task and Dr. Pan, in the few minutes I have had an opportunity to read your testimony and listen to you, I think as Senator Kerry has indicated, you certainly have given the staff a lot to look at and a lot to review and hopefully some of the legislation that finally comes to fruition will contain some of the meaningful suggestions that you have incorporated in your remarks today.

I would like to say I am sorry that I have not been and cannot be of more assistance to the Senator, but I look forward to his leadership and look forward to working with him at this time, so we may hear the other two witnesses. I am going to have to leave for another hearing.

I would like to ask that you permit me to submit my remarks in their entirety and, Mr. Chairman, I look forward to seeing this legislation that is proposed enacted into law and to bring the kinds of strengthening of the program.

And I might also add that a relatively new administrator, I guess it was several weeks ago, made one of the strongest, most impassioned statements I have ever heard, the former Senator Abdnor going to 8(a). So I think we have a believer, a real champion and I think with the various of those who are more in the field and those who are participating, your observations will play a very crucial role in seeing to it that we don't create inadvertently more difficult situations but, rather, that we just strengthen the program.

Thank you, Mr. Chairman.

[The prepared statement of Senator D'Amato follows:]

STATEMENT BY SENATOR ALFONSE M. D'AMATO
BEFORE THE SMALL BUSINESS COMMITTEE
FEBRUARY 25, 1988

MR. CHAIRMAN, I WOULD LIKE TO WELCOME TO THE SMALL BUSINESS COMMITTEE THIS AFTERNOON OUR PANEL OF WITNESSES WHO WILL CONTINUE OUR DISCUSSION OF THE MINORITY BUSINESS DEVELOPMENT REFORM ACT.

THE PREVIOUS TWO HEARINGS ON S. 1993 HAVE PROVIDED MUCH FOOD FOR THOUGHT. WE HAVE HEARD FROM A VARIETY OF WITNESSES RANGING FROM THE SBA TO 8(A) PROGRAM PARTICIPANTS TO THE CHAIRMAN OF THE HOUSE SMALL BUSINESS COMMITTEE. MANY OF THE WITNESSES HAD DIFFERING IDEAS ON HOW BEST TO RESTRUCTURE THE 8(A) PROGRAM. THEY ALL AGREED, HOWEVER, ON THE NEED TO PRESERVE THIS PROGRAM WHICH IS SO VITAL TO THE MINORITY BUSINESS COMMUNITY.

PUBLIC PERCEPTION OF THE 8(A) PROGRAM IS AT AN ALL TIME LOW. IT IS INCUMBENT UPON US TO DEMONSTRATE THAT THE PROGRAM IS WORTHWHILE AND THAT WE CAN MAKE THE NEEDED REFORMS TO RETURN THE PROGRAM TO A HIGHER LEVEL OF PRODUCTIVITY. THE PROVISIONS IN S. 1993 ARE INTENDED TO ACCOMPLISH THIS.

DE-POLITICIZATION OF THE SBA AND THE ADMINISTRATION OF THE PROGRAM AND THE INTRODUCTION OF A GREATER ELEMENT OF COMPETITION WILL GO A LONG WAY IN MAKING THE PROGRAM OPERATE MORE EFFICIENTLY.

THERE ARE MANY ASPECTS OF THE BILL THAT THIS COMMITTEE NEEDS TO EXAMINE FURTHER. QUESTIONS HAVE BEEN RAISED ABOUT THE \$2 MILLION CONTRACT THRESHOLD, THE MANDATORY BUSINESS-MIX PROVISIONS, AND THE 150% LIMIT ON NON-COMPETITIVE CONTRACT AWARDS.

I LOOK FORWARD TO THE TESTIMONY OF TODAY'S WITNESSES ON THESE SPECIFIC ISSUES AS THE COMMITTEE CONCLUDES ITS HEARINGS.

THANK YOU, MR. CHAIRMAN.

Senator KERRY. Thank you very much, Senator D'Amato. I appreciate it, both those comments as well as your assistance on this as we proceed.

If we can go back now. Let me remind folks that we are going to be under time constraints and I do want all the panels to get a shot here, so if we could summarize, go through it, I assure you we all have the written full testimony with us.

Who is going to go first?

STATEMENT OF RALPH C. THOMAS III, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS, ACCOMPANIED BY JULIO JO, PRESIDENT, J&J ENGINEERING, INC., MIAMI, FL

Mr. THOMAS. I will introduce Mr. Jo. Good afternoon, Mr. Chairman. My name is Ralph Thomas. I am executive director of the National Association of Minority Contractors here in Washington, DC.

With me this morning is Mr. Julio Jo, president of J&J Engineering in Miami, FL. Mr. Jo is an 8(a) contractor and he is also on the board of directors of the National Association of Minority Contractors.

While Mr. Jo will summarize the testimony we have presented, I would like to add a couple brief comments at the end of his summarization. Thank you.

Senator KERRY. Thank you, Mr. Thomas. Mr. Jo, welcome.

Mr. Jo. Good afternoon, Mr. Chairman. It has been a pleasure to be able to testify before you this afternoon on S. 1993.

By way of introduction, let me say that the National Association of Minority Contractors was established in 1969 to address the needs of the minority contractors of the country. Currently we have about 3,500 members across 46 States, the District of Columbia and the Virgin Islands.

Of the approximate 1,000 8(a) contractors in firms in construction, about one-third of these contractors are a member of our association.

By the way, I have been a contractor for 15 years and I have been 8(a) certified for 2 years. I am also the immediate past-president of the National Hispanic Association of Construction Enterprises.

There are many positive aspects of S. 1993. Some of the provisions of this bill are long overdue.

Senator KERRY. Could I ask you a question? You say you were in existence for 15 years?

Mr. Jo. I have been in construction contracting for 15 years, yes, sir.

Senator KERRY. Contractor. Did J&J exist or when did that start?

Mr. Jo. J&J was founded in March 1973.

Senator KERRY. 1973.

Mr. Jo. By myself.

Senator KERRY. And how many employees did you have in the early 1980s?

Mr. Jo. In the early 1980s I had 85 employees. Today I have 10.

Senator KERRY. It would be interesting to understand that transition but anyway, go ahead. I will come back to it.

Mr. Jo. There are other parts of this bill which cause us concern from a construction standpoint. However, we have offered potential solutions to remedy such concerns.

We support the changes regarding the eligibility and participation. Many of our members had to wait 18 to 24 months before a final decision was rendered on their application. And a number of potential Federal Government contracts went by and were lost.

We also support the statutory right of appeal to an applicant denied certification as well as to the procedures for challenging and reviewing the eligibility of the program participants.

In section 204 of this bill, however, which covers termination procedures, we recommend a slight change. Section 204(V) gives the SBA the right to terminate the program participant if he or she violates rules or regulations promulgated by the administration. We believe this language is too broad and may allow too much discretion.

We recommend this section be amended to read "willfully violates rules and regulations promulgated by the administration." This language will be able to accommodate misunderstandings or other legitimate reasons for not complying with the rules and regulations.

We strongly support the provisions of the bill which enhance the management assistance furnished to program participants. This has always been a weak spot in the program.

Section 302, however, causes some concern. While this section is well intended, we do not feel that it will work from a practical or administrative standpoint. First, because of the time factor.

Senator KERRY. Because of what?

Mr. Jo. Because of the time factor, the first problem we have with it.

The second point is that no contractor, even if he is bidding on the maximum amount of projects, will come anywhere close to utilizing \$100,000 in bid costs. Assuming, for example, that an 8(a) contractor bids six jobs a year at maybe \$2 million per job, which is highly unlikely, his costs will be anywhere between \$12,000 to \$20,000.

We recommend that such funds be used for the payment of performance bond premiums and for cash bond guarantees. The inability to obtain bonding has often foreclosed minority contractors from performing construction projects.

Our association would also like to make a suggestion regarding section 305, the Minority Business Direct Loan Program. This program is apparently intended to replace the Business and Development Expenses Program which was designed to assist 8(a) contractors by giving them the funds necessary to purchase expensive equipment for the performance of a contract. The funds were given rather than loaned to allow the contractor to perform and develop without being straddled with extra heavy debts.

With the elimination of this program, the 8(a) firm will now have to purchase that expensive equipment. And in all likelihood, this contractor will not have the necessary assets to collateralize that

equipment and it will hinder his ability to obtain performance bonding.

We recommend that this revolving fund be used by the Government for the purchase of major equipment, expensive equipment that this contractor or other contractors in the 8(a) Program can use and be loaned to this contractor or leased with an option to buy by the same contractor.

If this contractor cannot buy that equipment at the end of that contract, then the Government can turn around and loan or lease that equipment to another contractor that might be able to use the equipment.

Our association understands the Committee's reasoning in requiring program participants to attain specified percentages of non-8(a) business in various milestones after their initial 3 years in the program.

In construction, however, the ability of a firm to obtain contracts rests in his ability to bond the jobs. As he performs and builds a capital base, financial base, he is able to take on larger construction projects.

Under this bill's business mix formula, however, a contractor will be limited in his ability to obtain 8(a) contracts during the period that he will be most able to bond them. It is important to understand that even the 8(a) contractor's ability to obtain non8(a) contracts is based on his ability to obtain adequate bonding.

It is for this reason that our association recommends that for construction contractors, the business mix formula be revised to reflect our comments.

We also applaud the Committee's desire to introduce competition on 8(a) firms. At the same time, however, we do not want to see self-marketing by 8(a) firms discouraged. Most of the contracts obtained by the 8(a) contractors are through self-marketing.

It is doubtful that an 8(a) firm would identify a potential 8(a) project merely to compete for it with other firms.

Moreover, the larger firms would dominate the performance of all contracts over \$2 million because of their ability to obtain bonding and volume purchases.

They will have a perpetual advantage over smaller 8(a) firms. We, therefore, recommend that the threshold be raised from \$2 to \$10 million.

You have to understand that in general contracting, the general contractor only performs anywhere from 15 to 25 percent of the total work. 75 percent of the contract is most of the time subcontracted. We support the provision requiring the termination of the contract by a program participant through the sale of its business.

The 8(a) Program is based upon long-term minority business development and minority economic empowerment. It is not based upon short-term individual enrichment by using the 8(a) Program or 8(a) contracts as a bargaining chip.

There are a number of provisions in this bill which increase the level of scrutiny over the 8(a) Program. While complying with some of these provisions will be annoying and inconvenient for both the SBA and 8(a) contractors, such provisions should serve to better preserve the integrity of the program and also allow for the collec-

tion of more pertinent data which may be crucial for improving the program.

The amendments establishing the relationship between the goals mandated by section 1207 of P.L. 99-661 and the 8(a) Program are heartily supported. Our association is also pleased with the inclusion of the provision establishing liquidated damage provisions for the enforcement of subcontracting plans required by section 8(d) of the Small Business Act. This is long overdue and will be very well received by the minority construction community.

We are also impressed with the provisions requiring the President to establish annual goals for minority firms in Federal procurement as well as requiring him to submit annual reports to Congress indicating the progress in meeting such goals.

It has been our great pleasure making these comments to you. We are now ready to answer any questions you have.

[The prepared statement of Mr. Thomas follows:]



NATIONAL ASSOCIATION OF MINORITY CONTRACTORS

806 15th Street, N.W. • Suite 340 • Washington, D.C. 20005 • (202) 347-8259

TESTIMONY OF THE
NATIONAL ASSOCIATION OF MINORITY CONTRACTORS
BEFORE THE
SENATE COMMITTEE ON SMALL BUSINESS
ON THE
"MINORITY BUSINESS DEVELOPMENT PROGRAM
REFORM ACT OF 1987"

FEBRUARY 25, 1988

RALPH C. THOMAS, III
Executive Director

RICHARD E. BATTLE
President

4-7

-1-

Good Morning, Mr. Chairman, and Member of the Committee on Small Business. My name is Ralph C. Thomas, III, and I am the Executive Director of the National Association of Minority Contractors (NAMC) Washington, D.C. With me this morning is Mr. Julio C. Jo who is President of J & J Engineering, Inc. in Miami, Florida. Mr. Jo is also an 8(a) contractor and currently sits on our organization's Board of Directors. The balance of this testimony will be delivered by Mr. Jo.

Good morning, Mr. Chairman and Members of the Committee. It is my pleasure to be able to testify before you this morning regarding S.1993, the "Minority Business Development Program Act of 1987". By way of introduction, NAMC was established in 1969 to address the needs and concerns of minority contractors. Currently, we have more than 3500 Members across 46 states, the District of Columbia and the Virgin Islands. Of the approximate 1000 construction contractors presently in the 8(a) program, about one-third (1/3) are NAMC members.

There are many positive aspects of S.1993. Some of the provisions of this bill are long overdue and will clearly strengthen the integrity of the program. There are other parts of the bill which cause us concern from a construction point of view. However, we have offered potential solutions to remedy such concerns. Since I am an 8(a) contractor, I will be making personal comments as I present our testimony.

Program Organization, Eligibility and Participation

NAMC supports the changes regarding 8(a) eligibility and participation. Such provisions require the Small Business Administration to complete the certification review process within 90 days of receipt of a completed application and to notify an applicant of a deficient application within 15 days. Many of our members had to wait 18-24 months before a final decision was rendered on their 8(a) applications. A number of potential federal government contractual opportunities were lost during that time. For this reason alone NAMC welcomes these provisions. In addition the reduction of waiting time will also result in a decrease in contractor frustration and anxiety when attempting to make future projections for the direction of their businesses.

We also support the statutory right of appeal to an applicant denied certification as well as the procedures for challenging and reviewing the eligibility of 8(a) program participants.

In Section 204 of the bill, however, which covers "Termination" procedures, we recommend a slight change. Section 204(V) gives the SBA the right to terminate a Program Participant if he/she "violates rules and regulations promulgated by the Administration;" This language is too broad and may allow too much discretion. We recommend amending Section 204(V) to read "willfully violates rules and regulations promulgated by the Administration;" Such language will be able to accommodate

misunderstandings or other legitimate reasons for not complying with 8(a) rules and regulations.

Enhancing the Program's Business Development Aspects

We strongly support the provisions of the bill which enhance the management assistance furnished to program participants. This has always been a weak spot in the program. Also the bill's reemphasis on the development and maintenance of a realistic and workable business plan will not only make the 8(a) contractor's tenure in the program more predictable but will also force the contractor to develop business habits that should serve him well long after he has left the program.

Section 302 causes us some concern, however. This section establishes a revolving bid and proposal cost fund which provides up to \$100,000 annually to defray cost of contract competitions for participants in the initial four years of program participation. It can also be used to assist program participants in the later four years who have failed to attain the required "business mix" of competitive contract awards (50% of any grant must be repaid to the fund, if the contract is won.)

While this section is well-intended NAMC does not feel that it will work from a practical or an administrative standpoint. The first problem is the time factor.

Once a contractor learns about a construction project he is interested in bidding on, there is usually very little time to do anything except prepare for the bid. It is hard to conceive a situation in which the SBA could get the money to a contractor in time to pay for bid proposal costs.

A second point is that no contractor, even if he is bidding on the maximum amount of projects, will come anywhere close to utilizing \$100,000 in bid costs. Assuming, for example, that an 8(a) contractor bids six (6) jobs a year at \$2 million per job (which is highly unlikely) he would spend on bid proposal costs about \$12,000 to \$20,000.

NAMC recommends that such funds be also used for the payment of performance bond premiums and for cash bond guarantees. Inability to obtain bonding has often foreclosed minority contractors from performing construction projects.

NAMC would also like to make a suggestion regarding Section 305 -- the Minority Business Direct Loan Program. This program is apparently intended to replace the Business and Development Expenses (BDE) program which was designed to assist 8(a) contractors by giving them the funds necessary to purchase expensive equipment necessary for the performance of a contract. The funds were given rather than loaned to allow the contractor to perform and develop without being straddled with extra heavy debt.

With the elimination of the BDE program the 8(a) firm will now have to purchase such expensive equipment. In all likelihood the 8(a) contractor will not have the adequate assets to collateralize such a loan and even if he did, his ability to than get sufficient surety bonding would be reduced.

NAMC recommends the Revolving Fund be used by the government for the purchase of major expensive equipment. Such equipment would then be loaned or leased to the 8(a) contractor with an "option to buy" at the end of the contract. If not purchased by the contractor, such equipment can then be loaned to another contractor in need of such equipment.

Enhancing the Program's Business Development Aspects

Business Mix

NAMC understands the Committee's reasoning in requiring program participants to attain specified percentages of non-8(a) business at various milestones after their initial three years in the program. This is justifiable concern of graduating 8(a) firms suffering substantial losses of business revenues as a result of leaving the 8(a) Program.

In construction, however, the ability of a firm to obtain contracts rests in his ability to bond the jobs. As he performs and builds a capital base, he is able to take on longer construction projects.

Under the bill's business mix formula, however, an 8(a) contractor will be limited in his ability to obtain 8(a) contracts during the period he will be most able to bond them. It is important to understand that even the 8(a) contractor's ability to obtain non-8(a) contracts is based on his ability to obtain adequate bonding.

Thus, NAMC recommends that for construction contractors the business mix formula be revised to reflect the afore-mentioned comments.

Competition

NAMC applauds the Committee's desire to introduce competition among 8(a) firms. At the same time, however, we do not want to see self-marketing by 8(a) firms discouraged. Most of the contracts obtained by 8(a) contractors are through self-marketing. It is doubtful that an 8(a) firm would identify a potential 8(a) project merely to compete for it with other 8(a) firms. Moreover, the larger 8(a) firms would dominate the performance of all contracts over \$2 million, because of their ability to obtain bonding. They would have a perpetual advantage over smaller 8(a) firms. NAMC, therefore, recommends that the threshold be raised from \$2 million to \$10 million dollars.

Contract Award & Administration

NAMC strongly supports the provision requiring the

termination of a contract by a program participant through the sale of its business. The 8(a) program is based upon long term minority business development and minority economic empowerment. It is not based upon short-term individual enrichment by using the 8(a) program or 8(a) contracts as a bargaining chip.

Improved Program Management and Congressional Oversight

There are a number of provisions in this bill which increase the level of scrutiny over the 8(a) program. While complying with some of the provisions will be annoying and inconvenient for both the SBA and 8(a) contractors, such provisions should serve to better preserve the integrity of the program and also allow for the collection of more pertinent data which may be crucial for improving the program.

Other Amendments

The amendments establishing the relationship between the goals mandated by Section 1207 of P.L 99-661 and the 8(a) program are heartily supported. NAMC is also pleased with the inclusion of the provision establishing liquidated damage provisions for the enforcement of subcontracting plans required by Section 8(d) of the Small Business Act. This is long overdue and will be very well received by the minority construction community.

We are also impressed with the provisions requiring the President to establish annual goals for minority firms in federal procurement as well as requiring him to submit annual reports to Congress indicating the progress in meeting such goals.

It has been our great pleasure making these comments to you. We are now ready to answer any questions you might have.

Mr. THOMAS. Mr. Chairman, I would like to make two points for about 60 seconds. I think a lot of emphasis in this business mix which states that a contractor should have a certain amount of non8(a) contracts after a certain amount of years, I think that we have to remember that contractors will not have, do not have an absence of non8(a) contracts out of choice. In fact, it is generally because of weak bonding, weak financing and weak ability to obtain work volume.

One of the things that the 8(a) Program gives the contractor an opportunity to do is to gain contracts so that he can increase his bonding ability, increase his financing and then be able to go back into the competitive world and compete better.

In fact, I think it is probably a choice of many construction contractors that they have more private work than they do. So I think, getting back to something that Senator Mikulski said, was that it is kind of difficult for a contractor to dictate what his percentage of contracts will be for him to dictate whether he will have 75 percent after a certain period of time and 25 percent 8(a) in another period of time.

I think what Mr. Jo was saying as far as the slide of the scale starting at 80 percent and going down to 20 percent at the end from a construction contract standpoint, that is kind of backwards because as he increases, as his ability to obtain bonding increases, he is then able to obtain a greater volume of contracts and build.

Also, one other point is that there was a lot of illusion to the survey and what happens to contractors when they get out of the 8(a) Program, that they often lose a lot of their business volume. That's not necessarily because of the contractor himself or his inability to be used to competitively bidding.

On many occasions the surety companies will pull the rug from under the contractor that they have been bonding during the 8(a) Program. That they will not bond him any more because he is out of the 8(a) Program. While he was in the 8(a) Program, they felt comfortable because they felt that the Federal Government would not allow him to default.

Now, whether that is right or wrong, that is a perception of surety bond companies. And the reason why the volume goes down is not necessarily the fault of the 8(a) contractor.

Thanks very much.

Senator KERRY. That is an interesting perception. You suggest the threshold ought to go up to \$10 million. Should it go up to \$10 million across the board or should we begin to think in terms of different industries?

Mr. Jo. I am not familiar or I am not aware of the needs of other industries but we are very aware of the needs of our industry. In construction, like I said before, we perform 25 percent of the work with our own forces. 75 percent of the work is subcontracted.

And limiting our self-marketing for contracts to \$2 million will deter our willingness to go out and increase our bond.

Mr. THOMAS. I would like to add something to that, Senator Kerry, about industry. I think you should start thinking in terms of industry because in construction what you have with a \$2 million cap is that the larger firms, say \$10 million 8(a) firms, who have no trouble obtaining bonds, would then get all of the con-

tracts in that area and they would have such a hold over regions that they could even call suppliers and tell them to give double quotes to anyone else who would call and ask them for quotes.

So I think it would create, I think it would further give more contracts to a smaller group of contractors. And although I agree with Dr. Velez and some of the other people who explained why there are such a small number of contractors getting most of the contracts, I think a lot of that has been motivation and doing whatever they have to do to go out there and develop the business.

Senator KERRY. The question has been raised whether it would be more advisable rather than setting a specific threshold statutorily, to set percentages of contract dollars or contract actions and weigh that against data that comes in from the Federal procurement office. What about that?

Would that make more sense and it would kind of be a more variable sliding scale, I guess, if that were to happen? Any response to that, Dr. Pan? I see you nodding. Are you just going to sleep?

Dr. PAN. Not much chance of falling asleep. I think in an ideal world it would be very nice to set competitive thresholds, FPT and other such provisions that would be sensitive to the characteristics of each industry but you have to trade that ideal against the reality of having to administer the program with clarity.

When I am talking about clarity, I am particularly concerned about the clarity of the program as it is operated from a procurement point of view as opposed to simply SBA or the program participants.

So I am really—whereas I can see the advantages of variations by, let's say, 30 percent of the procurement done in a particular industry, whatever percentage, as opposed to the fixed threshold or an FPT that is sensitive to the amount of time necessary for a firm to grow and mature by industry. Those are good ideas but how in the world are we going to make those rules operate clearly?

Senator KERRY. Let me ask you about that. I am going to have to apologize to all, I have just gotten word that Senator Pell needs to meet with me at 4 o'clock so we are going to have to try to go fairly rapidly here.

What questions we can't ask now formally, we will ask later in writing for the record.

Let me just say. You know, here we have a program that is, I am talking broadly here, but we have a program that is geared to make up for something where there is nothing. And we are trying to reach out pro-actively to create a business development program.

Now, I am not trying to create a loophole or a window here but I think we have all got to be somewhat measured in understanding that there are some real difficulties in guaranteeing statutorily that this thing is going to be absolutely even-handed. Somewhere there has to be a cutoff. Somehow there has got to be an incentive. Somehow there has got to be a way of building the ability of a company to survive after it has gotten an opening and some expertise in technical.

And I think your ideas about transition and additional input in the latter stage are very interesting. And I think we ought to explore those more as to how we do that but, you know, you can

create an interminable entity here if you don't try to divide and cut some lines somehow. Do you disagree with that? There is going to have to be some arbitrariness, is there not?

Dr. PAN. I would go with some arbitrariness in exchange for clarity of implementation of the program. The confusion is more damaging to the program than the arbitrariness, I mean having to choose between.

Senator KERRY. Let me come back to one other thing. On the 150 percent concept, obviously that's a response to Winntech and we have seen a situation where a company was getting enormous increases in contract out of all proportion to both the program and the reality of the company.

How do we deal with that, keep this thing open-ended and trust the next set of people are going to be more discretionarily in touch or do we set something relatively arbitrary and notwithstanding the fact that it has got a few rough edges?

Dr. PAN. Senator Kerry, you already have in place a system called certificate of competency.

Senator KERRY. Maybe we should give that to the administrators rather than the impotents.

Mr. THOMAS. I don't think we should over-react to Wedtech. I think it is only one incident and where there does have to be arbitrariness, I think we should, if we are going to be arbitrary, we should lean to more flexibility rather than rigidity.

And it is one of the reasons for one of our recommended changes and one of the termination sections as far as "willfully" rather than "violates" because where you have flexibility, there is always room to improve, even after the law.

Senator KERRY. In writing subsequently, I would like to follow up, Mr. Jo, on the issue of this bonding, I want you to elaborate to us later, experiences that have occurred with respect to the bonding so we can try and tie that down as to how this legislation could better deal with construction contractors which are very different obviously from some others.

All of which leads me to believe that we are going to still have to toy with the discretionary aspects of this and the waiver aspects of it to meet some of those needs and not have a crazy program and start something which just never even finishes it.

So I want to thank you all very much. I think your suggestions, again, are very interesting, very interesting thoughts and a lot of food for thought for the staff and we have got our work cut out for us.

I thank you very much. If I could invite the third panel to come forward.

Mr. Henderson, Dr. Marshall, Mr. Joseph, we thank you very much for being with us.

Mr. Henderson, Senator Levin asked me to apologize to you. He wanted to be here at this session. He is down in the Armed Services Committee and tied up but he does send his best and welcomes you and I welcome you on his behalf.

If I could ask you, for all of our benefits, if you could limit each of your own things to about 5 minutes, summarize, that would be very, very helpful to us. I apologize, your full statements will be

placed in the record and I can promise you that the galaxy of staff behind me has gone through them and will continue to.

Who is leading off? Mr. Henderson, thank you.

[The prepared statement of Senator Levin follows:]

STATEMENT OF SENATOR CARL LEVIN
INTRODUCING LAMAR HENDERSON
HENDERSON ELECTRIC, INC.

Mr. Chairman, I would like to welcome Lamar Henderson, the President of Henderson Electric here this afternoon. Henderson Electric is a Michigan Company that was founded in 1977 and entered the 8(a) program in 1984.

Henderson Electric has tripled its business since entering the 8(a) program and has a reputation as a company that is capable of doing a quality job at a competitive price. Moreover, Henderson Electric has grown without becoming overly dependent on the 8(a) program. Henderson Electric received less than half of its business through the 8(a) program last year.

I commend Mr. Henderson for his success in using the 8(a) program as it was meant to be used -- to build a strong, independent business. Mr. Henderson can provide the Committee with a real world view of how the Senate Bill will affect the companies it is intended to support. I look forward to his testimony.

STATEMENT OF LAMAR HENDERSON, PRESIDENT, HENDERSON
ELECTRIC, INC., DETROIT, MI

Mr. HENDERSON. Well, I guess I want to concentrate on one item that seems to be overlooked and perhaps it is because the Detroit district office appears to be working the way the program was initially designed to work.

One of the things that is supposed to happen is the regionalization of the procuring agency. In other words, our contract specialist is to move from Detroit to Chicago. Well, in the construction industry, our contract specialist goes out and secures work for us.

I notice that most of the people said they have to actually go out and sell themselves as a company. Well, we actually have an active agency that procures work in Detroit and perhaps before all of these massive changes come about, if they were interviewed, they can tell us how they have made Detroit work.

We don't have a real problem finding work and perhaps we work on a lot smaller scale than a lot of people. I think the largest contract I have heard of in our district this year was \$3.4 million, so maybe those larger jobs are harder to find than the \$1 million jobs. Our contract specialist not only represents us in problem areas on a particular job, he also is probably the only person that knows all the buyers in our local area.

So if he has moved to Chicago, and I would assume we are going to have regional functions in Chicago, I am sure we will lose a lot of contracts based on the fact that his job has been relocated to Chicago from Detroit, approximately 300 miles.

So it seems like a small item but I found it in the Congressional Record here and it is a very small item on page 7 but it is a big item as far as we are concerned for contractors in Detroit.

I won't get into any other issue right now because I think they have all been covered and I know time is short. Thank you.

[The prepared statement of Mr. Henderson follows:]

henderson electric, inc.

18431 W. MENDOTA
DETROIT, MI 48219 / (313) 537-1155

Statement of

HENDERSON ELECTRIC, INC.

to the

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

on

BILL S. 1993

FEBRUARY 22, 1988

henderson electric, inc.

18431 W. MCNICHOLS
DETROIT, MI 48219 / (313) 537-1155

February 22, 1988

Henderson Electric, Inc. was founded by Lamar and Shirley Henderson in August 1977. We were incorporated in December 1977 with 100% of the stock, then and presently, jointly shared by Lamar and Shirley Henderson. We were the first black company to complete the International Brotherhood of Electrical Workers Local #58 Apprenticeship program and then became a union contractor in the State of Michigan.

During the ensuing years Henderson Electric, Inc. has shown slow but steady growth in every phase of business. We carefully strive to minimize mistakes by cautiously pursuing new contracts at slightly escalating dollar values.

During our ten year history the staff of Henderson Electric, Inc. has grown from two (2) to twenty-two (22) employees. Our annual sales have increased from \$24,500.00 in 1977 to \$1,021,000.00 in 1987. We have carefully selected our management staff to ensure quality field supervision. We have successfully completed over two hundred (200) contracts during our life span and have never been sued nor defaulted on any contract.

We strive to "self-market" our company by completing contracts in a timely, professional manner, thereby gaining repeat business with current customers. We concentrate on satisfying our present customers because oft-times they recommend Henderson Electric to new customers which puts us in a negotiating situation in lieu of the formal competitive bidding process.

ELECTRICAL CONTRACTORS • COMMERCIAL • INDUSTRIAL

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An example of this "word of mouth" marketing approach recently proved true. After successful completion of a contract with the VA Hospital in Allen Park, Michigan we were recommended by the COR to do work at the Battle Creek VA Hospital. Upon completion of the Battle Creek VA Hospital project we were recommended by both the Battle Creek and Allen Park VA COR for work at the Iron Mountain, Michigan VA Hospital. We recently signed a \$304,000.00 contract in Iron Mountain and were notified that we were the first minority contractor to do work in the Upper Peninsula of Michigan in the last six years. We are currently persuing other non 8(A) work in Upper Michigan.

The team at Henderson Electric, Inc. feels that we are the prototype business that the SBA 8(A) program was created to aid. We rely on the 8(A) program, but have always work deligently to insure that annually our non-8A sales exceed our 8(A) sales. We are currently in the last year of our FPPT and awaiting a decision on our request for a three year extension.

The equation for a construction company's growth is complex, but the key ingredients are:

- A) Capital improvements
- B) Escalating bank line of credit
- C) Escalating supplier line of credit
- D) Bondability
- E) Insurability
- F) A proven track record

henderson electric, inc.

18431 W. MONROE
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The following is an example of our growth pattern for the years 1977 (start of business), 1984 (year of acceptance in 8(A) program) and 1987 (last fiscal year end).

	<u>1977</u>	<u>1984</u>	<u>1987</u>
Sales	\$24,000	\$429,069	\$1,021,181
Largest Contract	\$18,300*	\$252,000*	\$ 330,000*
Bondability Aggregate	N/A	\$250,000	\$1,000,000
Cost of bond	N/A	2.5%	1.44%
Bank line of credit	N/A	\$ 25,000	\$ 100,000
Supplier line of credit	\$ 5,000	\$100,000	\$ 500,000
Insurance Limits	\$25,000	\$250,000	\$1,000,000

*Each year we have obtained our largest contract in the open market.

Being a first generation business, which is typical of most minority businesses, we have made numerous mistakes simply because we did not have the personal guidance of an experienced business person. Since acceptance into the SBA 8(A) program in 1984 our mistakes have been minimized because of the excellent SBA 8(A) team of professionals in our Detroit District Office. Not only do they advise us in SBA 8(A) related work, but they constantly monitor our overall progress.

In an attempt to analyze Bill S. 1993, we feel that the most detrimental change will be the regionalization of contract procurement and monitoring. We recognize that the program has suffered widespread abuse, which must be eliminated, but by moving our District Contract Specialist, Mr. Larry Cook, to a regional office we not only lose our only direct contact with the local Government's purchasing agents, we also lose the one voice that knows the guidelines by which the Government's representative must administer a contract.

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An example of one of the types of problems we encountered is covered in our attachments "A" thru "D". Mr. Cook's presence has eliminated the need for an attorney and a resultant law suit. It is very doubtful that we will continue to get the personalized professional help we currently receive from a regional office.

Business Mix

A declining business mix coupled with rigid time frames really needs to be analyzed on a business by business basis. The Detroit District MSB/COD does emphasize a gradual 8(A) -Non 8(A) business mix but are sensitive to the fact that we did not feel the effects of the program until 2 years ago. They also recognize the cycling nature of the construction industry. Since the 8(A) program represents 44% of our current total sales, to reduce our 8(A) contract allowance at this point in our growth period could prove to be devastating. We agree that a systematic "phase out" of the 8(A) program is required, but feel that our local district office of the MSB/COD has the expertise to graduate our company into the mainstream in a time frame that will not be detrimental to our very existence.

Fixed Program Participation Period

The Fixed Program Participation Term (FPPT) is a problem in that the prescribed time frame lumps all businesses into one category with the expectation that the time required for success is the same regardless of the differences in the types of problems that are unique to each industry. Perhaps a study of successful businesses will show that different types of concerns require longer time frames to attain solid viability.

henderson electric, inc.

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We are an example of a company that feels in order to attain sure growth, we must carefully select both office and field personnel insuring that each hiree will be an asset and a long term employee.

We received our first 8(A) contract in the amount of \$10,000.00 in October, 1984. It was not until July 1985 before we received our second 8(A) contract. In reality we feel we wasted one year of eligibility. Now in 1988 as we begin to feel the positive impact of the program we find ourselves on the verge of graduation barring a denial of our request for a three year extension. We feel if the FPPT is extended to ten (10) years we will be equipped to compete in the open marketplace and become the best (not the biggest) electrical contractors in the state. We ultimately hope our children and grandchildren continue to work to insure that the third generation Henderson Electric, Inc. will not need, desire, any type of minority set aside programs.

Another example of the dedication of our Detroit District office is our Assistant District Director for MSB/COD, Mr. Conrad Valle. He has extended himself beyond the call of duty and has given us his home telephone number. Recognizing that most small business owners work seven days a week he is accessible for consultation and advice whenever, wherever! Our Business Opportunity Specialist, Mr. Israel Miller has proven to be an invaluable tool for business growth. Two years ago our business had no real direction, but Mr. Miller has advised us in capital improvements, bonding and banking. Under Mr. Miller's leadership we now have a realistic business plan that is geared for continuous growth.

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He also has aided us in the computerization of our business and has guided us along a path to open market bonding and an increased line of credit. Both are mandatory tools for continuous growth and competitiveness.

The fact that there has been abuse of the 8(A) program does great harm to all of the firms that the program was created to help. Admittedly, we are not informed as to the details of how the WEDTEK contract was handled, but we feel that a brief example of the sequence of events leading to the signing of an 8(A) set-aside construction contract with certain existing built-in check points assure integrity:

- 1) Contractor submits a detailed cost breakdown listing of all labor, materials, subcontractors and overhead costs to both SBA Contract Specialist and to the Government agency's representative.
- 2) Government's representative analyze breakdown by line item and compares with his own breakdown.
- 3) Any quantity or cost variance is discussed and negotiated openly.
- 4) Breakdown is then forwarded to a Central Agency for review and approval.
- 5) Contract is then awarded only after approval from Central Agency.

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Thus, it is apparent that all construction contracts are scrutinized prior to acceptance. We have enclosed copies of the construction cost breakdown sheets submitted to the U.S. Coast Guard (see attachment "E") for one of our 8(A) projects. This type of breakdown is typical and insures that a contract is handled in an "above board" manner.

Graduation

We are aware that only 70% of 8(A) contractors remain in business after graduation. We feel that it is incumbent that the SBA has the authority to insure that any company accepted into the program has a track record that proves the business can and will survive after 8(A). As a minority we feel it is time for us to do our share to make this program work. Federal, State and Local agencies have opened numerous doors for us and we at Henderson Electric are committed to using these programs as only a temporary aid in capturing our share of the market.

It is unfortunate that we are all lumped into the same group as one whose volume exceeded 100 million dollars (WEDTEK) and whose history is clouded with scandal. But we are committed to graduate whenever it is determined by the Senate and continue to conduct business for many years to come. Again, we would like to emphasize that WEDTEK and similar companies are the exception and not the rule. If the Senate really does want to see the 8(A) program work then a careful balance must be struck between the 8(A) program of today and the newly formatted 8(A) program of tomorrow.

henderson electric, inc.

18431 W. MICHIGAN
DETROIT, MI 48219 / (313) 537-1155Planning Contract Activity

It is well documented that most Government agencies are required to set aside a percentage of work for 8(A) concerns. Unfortunately it is also well documented that the term 8(A) carries certain negative connotations with many of the various agency's representatives. We feel that there must be a system established to monitor each procuring agency's compliance in order to assure that the 8(A) contractors are able to reach their pre-determined business goals. We also feel it would help to smooth the rift we encounter with some procuring agencies if their representatives were instructed that their job is to aid the contractor instead of searching for ways to complicate the contract.

Again we stress the importance of our District Contract Specialist who has first hand knowledge of each local Government agency and its representatives. If he senses that personalities will conflict causing job complications he advises us beforehand but always leaving the choice up to our company.

Contract Awards

We feel that the procuring and monitoring of contract awards under \$1,000,000.00 should remain at the local district MSB/COD. With the built-in contract checkpoints mentioned earlier in this letter it simplifies the entire contract process. We have been able to rectify most conflicts within 24 hours because of the availability of the local Detroit District Staff. Their immediate response facilitates the work flow avoiding costly re-mobilization charges. Surely there must be some type of monitoring of the District MSB/COD, but regionalization will pose serious burdens on the same 8(A) contractors the program was created to help.

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Bear in mind that there is a huge disparity between the 100 million dollar WEDTEK contract and the typical 8(A) contract with Henderson Electric. An example of one of four contracts is a \$97,000.00 contract we completed with the U.S. Coast Guard (see attachment "E"). In many 8(A) contracts we are required to use sub-contractors for the trades we are not qualified to perform. The re-cap on attachment "E" shows that the costs for labor, materials and sub-contractors exceeded 77% of the total contract amount. The contracting agency for this project was located in Cleveland, Ohio. The successful negotiations of this contract required several costly and time consuming trips from Detroit to Cleveland to discuss details with the agency's engineers. The negotiations also required constant communications with the District Contract Specialist and if, additionally, we were required to travel to the Chicago region SBA office, it is doubtful that the job could have been done at a reasonable price. The resultant lost travel time would have also posed an additional burden on us, the contractor.

The pending statute that limits the dollar amount of new contract awards to 150% of the dollar amount of the largest contract completed previously could prove to be quite stifling to a construction contractor. Many times contracts are laden with heavy supplies, equipment, material and sub-contractor costs, but require little increase in present labor and overhead costs. Provided credit is available, there is no reason a contractor should not be able to complete a larger contract of this nature. Therefore, we feel the 150% rule could prove to be a negative factor in terms of growth.

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At the Detroit District MSB/COD these and many other factors are weighed prior to the offer being extended to the qualified firms in the SBA 8(A) portfolio. Also, it should be noted, the program allows a contractor to mark up all direct job costs directly proportional to his existing overhead expense. Using this formula a contractor finds the overhead allowance for higher equipment cost usually exceed his actual overhead cost for that particular project and usually results in a higher job profit. This excess profit accelerates a company's growth provided the profits are re-invested in the company. Again, we feel perhaps any type of rate-of-percentage rule should be developed based on type of work being performed.

False Representation

We feel anyone committing perjury should be barred from the program for life. There is no way a company as large as WEDTEK should have a negative impact on Henderson Electric's growth and we fully support any maximum penalty the Senate mandates. The programs objectives are honorable and should not be destroyed by a few dishonest companies and Government officials. Surely the Senate can find a way to govern the 8(A) program that is fair to all participants. We trust that the Senate recognizes that most contractors fully appreciate the advantages the 8(A) program affords us and are diligently working to rebuild your confidence in us.

We have itemized the portion of Bill S. 1993 that will have the most immediate effect on Henderson Electric, Inc. Perhaps this is a selfish approach but we again emphasize that we feel we are a prototype of the firm that the program was designated to help. It is also our belief that the Detroit District MSD/COD is a prototype of the agency created by Congress. We along with the Detroit District MSB/COD, request further discussions on the proposed changes prior to the existing bill being mandated into law. We remain available and thank you for your time and consideration.

henderson electric, inc.

18431 W. McNICHOLS
DETROIT, MI 48218 / (313) 537-1155

Selfridge Car Wash Building 128
P.O. #5720
December 26, 1986

Williams & Richardson Co.
10611 W. McNichols
Detroit, Michigan 48221

Attn: Mr. Richard Willis

Re: Differing Site Conditions

Dear Mr. Willis:

This letter is to confirm the on site meeting held on
November 17, 1986 at 1:00 p.m. Those present were:

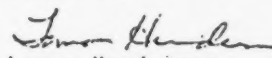
Tom Alderton - Project Engineer
Phil Turrell - Electrical Engineer
Richard Willis - Williams & Richardson
Lamar Henderson - Henderson Electric, Inc.

The meeting was held to discuss the disposition of the
several electrical conduit feeder runs that appeared only
after removal of the old ceiling.

Mr. Alderton and Mr. Turrell stated that these items did
not appear in the plans and specifications and advised me
that they would meet with base personel to determine exactly
what items were to be reworked and what items were to be
disposed of.

Mr. Willis, as of the writing of this letter we have not
been advised, neither verbally nor written, as to what
course to pursue.

Sincerely,


Lamar Henderson
President

LH:ab

cc: Mr. Larry Cook
U.S. Small Business Administration

Attachment A

henderson electric, inc.

10411 W. McNichols
Detroit, Michigan 48221

Selfridge Car Wash Building 128
P.O. #5720-2
December 19, 1986

Williams & Richardson Co.
10611 W. McNichols
Detroit, Michigan 48221

Attn: Mr. Richard Willis

Re: Job Meeting

Dear Mr. Willis:

This is to confirm the discussion of our construction meeting on Wednesday December 17, 1986. Those present were:

Ms. Paula Deshan - COR
Mr. Jim Cooper - Inspector
Mr. Tom Alderton - Project Engineer
Mr. Richard Willis - Williams & Richardson Co.
Mr. Gary Warwick - Williams & Richardson Co.
Mr. Lamar Henderson - Henderson Electric, Inc.

Ms. Deshan stated that if the obstructive conduits were not covered by the plans and specifications and it interfered with the progress of the construction schedule we were to proceed in removing or relocating these conduits as necessary and make a claim to the Government.

Based on this determination we have proceeded to make the necessary corrections.

Thank You,

Lamar Henderson
Lamar Henderson
President

LH:ab

cc: Mr. Larry Cook
U.S. Small Business Administration

Attachment B

henderson electric, inc.

18431 W. McNICHOLS
DETROIT, MI 48218 (313) 837-1155Selfridge Car Wash Building 128
P.O. #5720-2
January 2, 1987Williams & Richardson Co.
10611 W. McNichols
Detroit, Michigan 48221

Attn: Mr. Richard Willis

Re: Electrical Violations

Dear Mr. Willis:

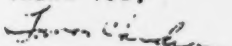
We have noticed numerous electrical violations on this project that were not covered by the plans and specifications. Violations included but not limited to the following:

- (A) Unfused Circuits
- (B) Abandoned but not disconnected circuits
- (C) Tap Rule Violations
- (D) Oversize Circuit Fusing
- (E) Line-Load Circuit reversals
- (F) Undersized parallel feeders

Per our discussion at the meeting with Ms. Paula Deshan on December 17, 1986 we are proceeding to make corrections on the items which directly affect our installation only. We will document daily the labor and materials required to make the installation safe and in accordance with code, then we will make a claim as instructed by Ms. Deshan.

Mr. Willis, we recommend that a qualified engineer thoroughly inspect the electrical wiring throughout the entire building because we can only be responsible for the work we install.

Thank You,


Lamar Henderson
President

LH:ab

cc: Mr. Larry Cook

U.S. Small Business Administration

Attachment C

henderson electric, inc.

18431 W. McNichols
DETROIT, MI 48219 / (313) 537-1155Selfridge Car Wash Building 128
P.O. #5720
January 19, 1987Williams & Richardson Co.
10611 W. McNichols
Detroit, Michigan 48221

Attn: Mr. Richard Willis

Dear Mr. Willis:

Per our discussion with Ms. Paula Deshon at the job meeting on December 17, 1986, we have completed the removal of all electrical items that interfered with the new construction. Please note that we corrected many electrical violations that were uncovered due to the demolition. Also note that many electrical violations remain but since they do not directly effect our remodel we did not proceed to make necessary corrections. Again we suggest that a complete and thorough inspection by a qualified engineer be performed as soon as possible as we can only be responsible for work installed by Henderson Electric, Inc.

Attached is a daily breakdown of work not covered by the plans or specifications but performed by our forces as directed by Ms. Deshon. Based on this documentation we request an extra work authorization in the amount of \$7,199.02 be added to our contract.

Thank You,


Lamar Henderson
President

LH:ab

cc: Mr. Larry Cook
U.S. Small Business Administration

Attachment D

Attachment E-1

HENDERSON ELECTRIC, INC.										18431 W. MCNICHOLS										DETROIT, MI. 48219																			
CONTRACT FOR (NAME OF PROJECT)										U.S. COAST GUARD-HANGAR DOOR CONTROL SYSTEM										PROPOSED TOTAL CONTRACT PRICE																			
PURCHASE REQUEST NUMBER										RFP #DTCS 30-87-R-10066										WORK LOCATION																			
										CS-6088										DETROIT AIR STATION																			
LINE NO.	ITEM	UNIT OF MEASURE	QUANTITY	MATERIAL COST		LABOR COSTS		OTHER DIRECT COSTS	LINE TOTAL																														
				UNIT	TOTAL	MANHOURS	MAINDAYS			AVERAGE RATE	TOTAL																												
				(3)	(4)	(5)	(6)	(7)	(8)	(9)																													
DOOR CONTROLLER																																							
1.	Disc and Abandon Cir.	LOT	1	----			1.0	30.05	30.05	30.05																													
2.	3PH 30A Cir. Brkr	EA.	1	44.07	44.07		.25	30.05	7.51	31.58																													
3.	New Power Panel	EA.	1	201.83	201.83		6.0	30.05	180.30	382.13																													
4.	3/4" GRS	C	3	95.19	285.57		27.0	30.05	811.35	1096.92																													
5.	4" x4" J. Box w/covers	E	4	2.47	9.88		1.0	30.05	30.05	39.93																													
6.	#10 AWS THHN Wire	M	1.5	57.75	86.63		6.0	30.05	180.30	266.93																													
7.	Safe Overhead wiring	LOT	2	73.00	146.00		9.0	30.05	240.40	386.40																													
8.	Control Panel Term.	EA	2	----	----		1.0	30.05	30.05	30.05																													
9.	E.P. Nipples 3/4"x24"	EA	2	62.00	124.00		2.0	30.05	60.10	194.10																													
10.	Sealoffs 3/4"	EA	2	4.55	9.10		1.0	30.05	30.05	39.15																													
11.	Motor Hookups	EA	2	----	----		4.0	30.05	120.20	120.20																													
12.	Limit SW. Htg/Hookup	EA	2	----	----		2.0	30.05	60.10	60.10																													
13.	Misc. Mat. Allow	LOT	1	50.00	50.00		-----	-----	-----	50.00																													
PAGE 1 TOTALS										967.03										1780.46										2747.54									

Attachment E-2

HENDERSON ELECTRIC, INC.									
19431 W. MICHIGANS DETROIT, MICHIGAN 48219									
U.S. COAST GUARD-HANGAR DOOR CONTROL SYSTEM									
RFP#DTCG 30-87-R-10056									
LINE NO.	ITEM	QTY	UNIT	MATERIAL COST		MANHOURS	LABOR COSTS		OTHER DIRECT COSTS
				UNIT	TOTAL		AVERAGE RATE	TOTAL	
DETROIT AIR STATION									
	ARMORED SNOW MELTER					16			1526
14	Temp Control w/Lite	E	2	38.88	77.76	3.0	30.05	90.15	167.91
15	RH1 81 Snow Mats 18"x54"	E	2	223.13	446.26	16.0	30.05	480.80	927.06
16	4"x4" J-BOX w/cover	E	4	2.49	9.88	1.0	30.05	30.05	39.93
17	#8 THHN WIRE	M	1.2	177.77	213.32	7.0	30.05	210.35	423.67
18	30A 3p Circuit Breaker	E	2	31.05	62.10	.5	30.05	15.13	77.23
19	Disc/Remove Copper Line	LOT	1			8.0	30.05	240.40	240.40
20	Misc. Mat/Test Inspect.	LOT	1	50.00	50.00	8.0	30.05	240.40	290.40
21	Steel Rail/Hsry Sub Cont.	LOT	1			4.0	30.05	120.20	15,120.00
22	OH-Door MTR. Install	LOT	1	10,500	10,500.00	72.0	30.05	2163.60	12,663.60
23	NEW OH DOOR SUB CONT.	LOT	1					3591.08	42,250.00
	TOTAL PAGE #2				11,359.32			1780.46	57,250.00
	TOTAL PAGE #1				967.06			5371.54	2,747.54
	GRAND TOTALS				12,326.40			57,250.00	74,947.94

IF 3052

AF 3052

Attachment E-3

INSTRUCTIONS FOR COMPLETING AF FORM 3052

col 1 Item. Description of materials required, work to be done, special equipment needed, etc. Breakdown should be in sufficient detail to permit itemizing of all direct costs.

col 2 Unit of Measure. Description of the unit in which each item is to be estimated (examples-square yards-SY, cubic yards-CY, square feet-SF, linear feet-LF, board feet-BF, each EA, pound-LB)

col 3 Quantity. Contractor's estimate of quantity required in terms of unit of measure (column 2). Items and units of measure will be furnished by the Government. Quantity estimates will be furnished by the Government only when it is anticipated that a unit price contract will be used. Otherwise, the contractor is responsible for determining quantity estimates.

col 4 and 5 Material Costs. Enter unit cost (col 4) of material to be supplied and total cost (col 5) for item listed in column 1.

col 6, 7 and 8 Labor Costs. Enter in col 6 the estimated number of manhours or mandays needed to perform the work listed in column 1. Enter in col 7 the average rate per manhour (man-day) and in col 8 the total labor cost.

col 9 Other Direct Costs. Enter estimated costs of special equipment and other items (listed in column 1) which are special to the contract and of significant dollar value.

col 10 Line Total. Self explanatory.

NOTE: In addition to other totals entered on various pages, the grand total of column 10, plus overhead and profit will be shown on the last page as follows:

TOTAL MATERIAL COSTS	\$	12,326.40
TOTAL LABOR COSTS	\$	5,371.54
TOTAL OTHER DIRECT COSTS	\$	57,250.00
TOTAL DIRECT COSTS	\$	74,947.94
*OVERHEAD 15.6 %	\$	11,691.89
SUBTOTAL	\$	86,639.82
PROFIT 10 %	\$	8,663.98
TOTAL PRICE	\$	95,303.80
	SUBTOTAL	\$
	BOND, 025	\$
	Total	97,696.40

DATE 5/7/87 FIRM NAME HENDERSON ELECTRIC, INC.
 TITLE PRESIDENT BY (Signature) John Henderson

*Overhead computed on company's actual G & A based on latest Financial Statement.

INSTRUCTIONS TO OFFERORS

1. The purpose of this form is to provide a standard format by which the offeror submits to the Government a summary of estimated and itemized costs (and attached supporting information) available for detailed review and analysis. Prior to the award of a contract resulting from this proposal the offeror shall, under the conditions stated in ASPR 1.807-3, be required to submit a certificate of current cost or pricing data (see ASPR 1.807-4(e) and 1.807-4).

2. In addition to the specific information required by this form, the offeror is expected to go beyond and submit with the form any additional data, supporting schedules, or substantiation which are reasonably required for the conduct of an appropriate review and analysis in the light of the specific facts of this procurement. For effective negotiations, it is essential that there be a clear understanding of

- The existing, verifiable data.
- The judgmental factors applied in projecting from known data to the estimate, and
- The contingencies used by the offeror in his proposed price.

3. In short, the offeror's estimating process itself needs to be disclosed.

4. When attachment of supporting cost or pricing data to this form is impracticable, the data will be described (with schedules as appropriate) and made available to the contracting officer or his authorized representative upon request.

5. By submission of this proposal the offeror grants to the contracting officer, or his authorized representative, the right to examine, for the purpose of verifying the cost or pricing data submitted, those books, records, documents and other supporting data which will permit adequate evaluation of such cost or pricing data, along with the computations and projections used therein. This right may be exercised in connection with any negotiations prior to contract award.

Senator KERRY. Let's run through it and I will come back to you.

STATEMENT OF DR. EDWARD M. MARSHALL, PRESIDENT, TRG, INC., WASHINGTON, DC, ACCOMPANIED BY MARSHALL JOSEPH, PRESIDENT, TECHMATICS TECHNOLOGIES, INC., SILVER SPRING, MD

Dr. MARSHALL. Thank you very much, Senator Kerry. I am honored to testify here today. I am founder and president of a small business management services company which, with the support of SBA, has pioneered a management and technical assistance approach which is called Transition Management, which is designed to assist 8(a) companies to move through the process of graduation and to do so profitably.

I am accompanied today by Marshall Joseph who is president of Techmatics Technologies and immediate past-president of the Black President's Roundtable of Washington, DC, and who was a participant in this project.

I know time is short and I would request, that our comments be put into the record. Let me get right to the point.

This Committee survey in 1987 pointed to the need for a transitional planning system and more timely management and technical assistance. Beyond certain provisions in this S. 1993 for business plans and seminars, there is no provision for a management/technical assistance delivery system which can meet those specific transition needs that we have been trying to address in the last year.

So the central focus of my testimony is a recommendation for a framework for such a system. What I am posing to you today is not based on theory, it is based upon 1 year's worth of work with these 25 8(a) companies and, in fact, we can testify to the fact that not only is the transition planning system feasible, but it is the way for the companies, SBA, and the Congress to win.

Our proposal is simply this: To create a Transition Planning Assistance System which can accomplish the four following objectives. First, to tailor management assistance to the phases of 8(a) firm development; second, to put transition planning as an 8(a) firm priority in the beginning of the program; third, to support 8(a) efforts to complete transition plans and meet the various business mix and completion thresholds before the end of the program; and fourth, to streamline SBA's administration of management and technical assistance.

So the central point here is that every company moves through phases of development and I believe the other witnesses today have testified to that. How would this system work?

We have prepared a chart which graphically presents how this system could work and I think it will answer a number of the questions that have been raised in testimony today.

My colleague Julian Dermuder, is going to point out the basic phases. You may find this chart on page 9 of my testimony where it is fully explained. I would just like to mention a few points.

We look at this like, using an education analogy, moving from junior high school to high school to college, on to our first job. We see there are really four phases in this program.

The Pre-application/Certification Phase includes all of those activities that go on before you get certified and get your first contract, which can take up to 2 years. The Developmental Phase which is about 4 years includes all those program startup activities and systems necessary to get that first contract off the ground.

The 2nd, 3rd and 4th years focus on preparing the transition plan so that they can begin to meet the business mix thresholds in the second half of the 8-year program. The suspension period, which I will come back to in a minute, is for those companies, that do not have certifiable transition plans at the end of the 4th year.

Phase III, the Transition Phase, is a period when these companies are expanding their contract base and getting ready to meet the competition and, indeed, competing with other 8(a) companies. Post-graduation would be the retooling period, the 1st year after they graduate, as they adjust to the competition in the private marketplace.

So you can see there are three milestones: certification, being certified as transition eligible, and graduation.

There are five points I want to make about this chart. The first point is every 8(a) firm be required of file—

Senator KERRY. Let me interject for a minute. We have a vote that is on and so we are going to be limited by bells here to about 5 or 6 more minutes.

Dr. MARSHALL. Let me come to the conclusion then. We strongly urge this Committee to redraft section 303 of this bill, the management assistance provision, to incorporate these recommendations for a phased management and technical assistance program, what we call a transition assistance planning system, and to do so in such a way that will enable these companies to graduate from this program successfully. I am more than happy to spend additional time to answer any questions you may have.

Senator KERRY. Can you summarize the five points for me you were going to make?

Dr. MARSHALL. The basic gist of it is that as these companies go through each one of these four phases, the kind of management assistance that is needed changes. SBA's role would also change by phase.

I think what the transition planning assistance system does is bring rationality to the entire program by having these companies go through it in a very rational way. You just raised the point in your earlier comments about transition planning. We are saying based upon 1 year's worth of demonstration work, we have already proven that this technology can work and we are sharing this with SBA and are more than happy to share it further with your Committee.

[The prepared statement of Dr. Marshall follows:]

TESTIMONY BEFORE
THE COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

ON SENATE BILL 1993
THE MINORITY BUSINESS DEVELOPMENT REFORM ACT OF 1987

Presented By

Dr. Edward M. Marshall
President
TRG, Incorporated

February 25, 1988

Chairman Bumpers, Senator Weicker, Senator Kerry, and Members of the Committee, I am honored to testify on Senate bill 1993. I am Founder and President of a small business management services company which, with support from the Small Business Administration, has pioneered the development of Transition Management*, a new small business management technology designed to enable 8(a) companies to effectively manage their way through the graduation process, and to do so profitably. I am joined today by my Senior Vice President, Julian Bermudez, who directs the Transition Management Project, and by Marshall Joseph, President of Techmatics Technologies, who represents the 25 companies participating in this demonstration project. Mr. Joseph is also recent past Chairman of the Black President's Roundtable in Washington, DC.

I applaud the Committee on a sound bill which is designed to reform and preserve a significant program which seeks to redress historic patterns of racial and economic discrimination. I also thank the Committee's staff, particularly John Ball and Erline Patrick, for their efforts on this bill and their openness to our comments.

I have reviewed this Committee's 1987 survey, of 8(a)

* Trademark pending. All future references to Transition Management are covered by this notation.

companies, Senate bill 1993, and House bill 1807 in detail, as well as the report of the National Academy of Public Administration. There is no doubt, based on the survey that 8(a) firms need substantially improved transitional planning and management assistance. Beyond certain provisions for business plans and seminars, however, neither the Senate nor House bills address the need for a management and technical assistance delivery system which can meet the specific transition needs of 8(a) companies as they move toward graduation. Without an effective delivery system tied to the stages of development for 8(a) companies, it is likely their successful graduation rate will continue to be low. The central focus of my comments today will be to recommend the framework for such a business development mechanism so that the program can achieve its legislative intent. I urge the Committee to amend or redraft Section 303 of this bill accordingly. Specifically, my comments today address three issues:

1. The need for transitional planning as documented by this Committee's survey of 8(a) companies in May, 1987.
2. Transition Management as an innovative approach to management and technical assistance which addresses the need for long term planning to enter the competitive market.
3. The importance of creating a transitional planning assistance delivery system linked to the stages of

development of 8(a) companies to enable them to graduate successfully.

Additional changes in the legislation are included later in my statement which I will not discuss here, but which I request be entered into the record.

As a political economist I believe that not only does the 8(a) program benefit minority entrepreneurs, it also benefits all Americans, because it speaks to the heart of this nation's practices of racial discrimination in financial markets, in procurement, and in the corporate board room. The 8(a) program should be preserved because it represents a laudable effort on the part of Congress to begin to correct this injustice.

On a policy level, the 8(a) program not only benefits people who have been historically disenfranchised, but benefits all Americans because it means economic self-determination, self-respect, and a real stake in the economic future of this country.

In effect, the 8(a) program is the front line of our struggle as a diverse people to find ways to honestly work together: Blacks, Hispanics, Asian-Americans, Native Americans, Aleuts, Eskimos, and Caucasians. Doing business together is one healthy vehicle we can use as a society to heal the wounds of history, increase mutual understanding, pursue the common goal of profitability, and learn new ways to cross old bridges.

As a professional who works with 8(a) companies on a daily basis, I share the Committee's concerns about the scandals, waste, fraud, and greed of a few companies, which have overshadowed the successes of the nearly 3,000 companies in this program. The balance of my comments, therefore, are directed at both the policy and program issues raised by this bill, and specific recommendations that will strengthen the reform package.

I. THE NEED FOR TRANSITIONAL PLANNING

In May, 1987, this Committee published its findings from a survey of 8(a) graduates which concluded that:

- The program lacks a transitional structure which can prepare the firms to leave the program and enter the competitive marketplace.
- The program was viewed mainly as a contracts program, rather than as a business development vehicle.

Among its key recommendations were:

- The creation of a transitional program which gradually reduces a firm's dependence on 8(a) contracts.
- More timely management and technical assistance.
- More concentrated management, technical and contract assistance even if the portfolio has to be reduced.
- Restructuring the program into two tiers, a start-up tier for smaller firms and a tier for larger, more stable firms.

Our work confirms both these findings and the need for these recommendations. In fact, a comprehensive approach to transitional planning for 8(a) companies combined with management and technical assistance is the most effective way to address

their business development needs, and to increase their rate of success after graduation.

II. TRANSITION MANAGEMENT: AN INNOVATIVE APPROACH TO
TRANSITIONAL PLANNING

Since late 1985, my company has been working on issues affecting the graduation prospects for 8(a) companies. Our initial research discovered that many 8(a) companies were not successfully graduating because they lacked adequate, appropriate, and effective management assistance. We proposed to the Small Business Administration to conduct a demonstration project which would begin to address this need. This project has become known by our product name: Transition Management.

In February, 1987, with support from the Small Business Administration, we began the Transition Management project by designing a business development technology specifically tailored to the needs of the graduating firm. Twenty-five 8(a) companies, representative of the more than 400 firms in the Washington metropolitan area, were selected to participate. Working with the Presidents of these companies, our expert team has provided each company with a rigorous program of services, including;

- An in-depth assessment of each company using an instrument which analyzes 150 different pieces of data.
- On-site, tailored technical assistance to address specific transition issues which vary from company to company.

- On-site executive consultation and management assistance on strategic planning for graduation.
- A Transition Management Guidebook which addresses the real problems they face in the graduation process.
- A series of seminars and workshops on critical issues selected by the Presidents.
- Trouble-shooting assistance as-needed.

The Transition Management approach to business development is based on the premise that since no two businesses are exactly alike, high quality management assistance must be tailored to the specific transition concerns of each company.

III. A FRAMEWORK FOR A TRANSITION PLANNING ASSISTANCE SYSTEM

Based upon the needs of 8(a) firms for transitional planning assistance, and our work over the last year, I am recommending that Section 303 be redrafted to create a Transition Planning Assistance System in the 8(a) program.**

Senate 1993 proposes an eight year program. Our project has found that during this time frame, 8(a) companies will move through four distinct phases; (1) Pre-Application and Certification, (2) Developmental, (3) Transition, and (4) Post-Graduation. As 8(a) firms move through these phases, management and technical assistance needs to be targeted to their specific concern in each phase of development.

** This redraft will also have implications for Sections 202, 203, 301, 302, and 401.

The Transitional Planning Assistance System proposed here is designed to meet the following objectives:

1. To create a management and technical assistance delivery system linked to the phases of 8(a) firm development, and which provides for pre-application and post-graduation assistance.
2. To put transitional planning as an 8(a) firm priority in the beginning of the program to increase the rate of successful graduation.
3. To provide a framework which supports 8(a) efforts to complete transition plans and meet business mix and competition thresholds.
4. To rationalize existing 8(a) management and technical assistance by organizing it by phases of development.
5. To streamline SBA's administration of management and technical assistance, thereby increasing their effectiveness.

The proposed Transitional Planning Assistance System would be administered by the Office of Management and Technical Assistance.

In the following proposal description, each phase of 8(a) business development is briefly described, followed by the focus of 8(a) firm actions in each phase, SBA programmatic actions necessary, and targeted management and technical assistance that would be available to them.

One way to look at the four phases of business development for 8(a) companies is the education analogy. Phase I or Pre-Application and Certification is in a way like Junior High School as one prepares to get into high school. There is anticipation,

anxiety and excitement. Phase II, the Developmental Phase, lasts four years and is a lot like high school where we learn the ropes, choose our basic direction, get into college preparatory courses, and get ready to leave home.

The third phase, called the Transition Phase, represents college and would also be four years long. During this time, competition stiffens, course work increases, we choose a profession (market niche), learn how to compete successfully, and prepare to enter the professional world without parental or other financial support. Phase IV, Post-Graduation, represents the first year in the competitive world with all the trials and adjustments associated with making it on our own.

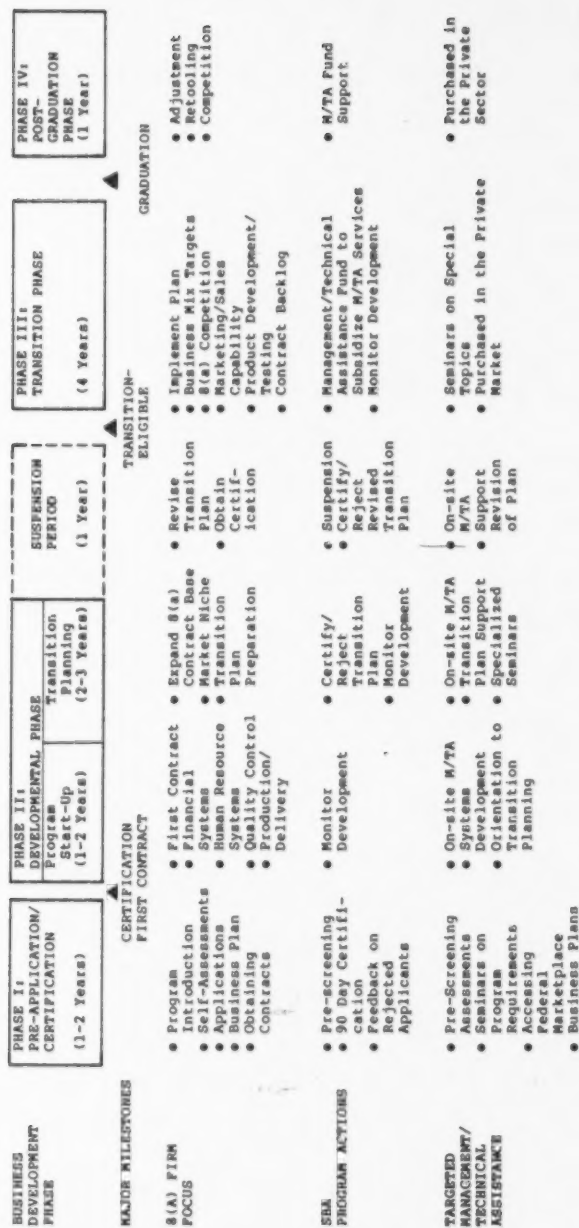
This education analogy, can be used to describe a phased approach to business development for an 8(a) firm. It provides a consistent structure within which effective and appropriate management and technical assistance can be targeted to the type of need by phase of development. It also achieve SBA's programmatic needs for smooth transition through the program and a higher rate of successful graduation. In effect, by adopting the four phase approach, SBA can create a Transition Planning Assistance System that will deliver the types and level of management and technical assistance needed when it is needed.

Specifically, how would this system work? The chart on the following page represents a framework for implementing this system.

COMMENTS ON 5.1993

CHART 1

PROPOSED TRANSITION PLANNING ASSISTANCE SYSTEM
FOR THE 8(A) PROGRAM



PHASE I: PRE-APPLICATION AND CERTIFICATION

This phase covers the time when a company first considers applying for certification, preparation of the initial business plan, the actual application process, and the period of time during which the applicant awaits certification. With the new 90 day certification processing requirement, this phase may last up to two years depending upon the success of the application, and actual processing time.

The company's focus is on assessing their own eligibility, getting the application completed and approved, learning how the 8(a) program works, learning how to access the Federal marketplace, and once certified, obtaining their first contract.

During this phase, SBA will pre-screen the applicant and complete the 90 day certification process. Rejected applicants would get feedback on their applications and an opportunity to reapply.

Management and technical assistance during this phase would provide:

- Seminars and workshops for interested applicants on program requirements and expectations.
- Pre-screening assessments.
- Seminars and workshops for approved applicants on how the 8(a) program works, an introduction to transitional planning, and how to access the federal marketplace.
- Assistance in preparation of business plans and applications.

PHASE II: DEVELOPMENTAL PHASE

The Developmental Phase can be divided into two parts, (1) Program Start-Up, which lasts 1-2 years, and (2) Transition Planning, which lasts 2-3 years. During Program Start-Up, with the award of the first contract, 8(a) firms will experience initial rapid growth, with all its attendant problems. The company's focus is on setting up the internal financial and management systems necessary to keep up with growth, establishing positive client relations, and delivering on contracts to create a positive track record. As the firm moves into Transition Planning, during the second, third and fourth years, the focus shifts to expansion of the contract base, establishing a market niche, and the proposed program, having a strategy to meet the competitive targets in the second half of the program. Transition Planning takes on a new significance as the reality of the competitive market thresholds gets closer.

During this phase, management and technical assistance is contracted by SBA, is "hands-on" and requires substantial one-on-one assistance. 8(a) firms will be oriented to the process of transition planning and will be monitored as they work to develop their Transition Plans for certification by SBA.

Management and technical assistance during this phase would be provided as follows:

Program Start-Up Management Assistance

- On-site management/technical assistance.
- Financial management systems.

- Human resource systems.
- Quality control standards and systems.
- Seminars orienting 8(a) companies to transition planning.

Transition Planning Assistance

- On-site management and technical assistance.
- Design and preparation of Transition Plan for review.
- Specialized seminars.

CERTIFICATION/SUSPENSION

At the end of the fourth year, the firm would submit its Transition Plan to be certified by SBA as "transition-eligible". If SBA did not certify the firm's plan, the company would be suspended from the program, and would have one additional year to prepare a plan that meets transition standards. During this year, the firm would not be eligible to receive 8(a) contracts, although it could deliver on existing contracts. Management and technical assistance provided during this period would be focused on revising the Transition Plan. As soon as the firm is certified during that year, it would have four more years to receive 8(a) contracts. If it was not certified by the end of the fifth year, it would be out of the program.

PHASE III: TRANSITION PHASE

In the last four years of an eight year program, the company

is focusing on implementation of the Transition Plan, on meeting the business mix thresholds, on competition with other 8(a) companies, establishing a competitive marketing and sales capability in-house, determining which products and services the competitive market will buy, product development and testing, and delivering on contracts. The firm would also be preparing itself, in the final two years, for graduation.

The role of SBA during this phase is primarily one of monitoring the progress of the firm. The companies have their certified Transition Plans and are expected to carry them out. Management and technical assistance needs would be determined by the firms themselves, and this assistance would be provided in a quasi-private market, meaning that the firms would choose their own management assistance providers, and SBA would help underwrite the costs. If, for example, a firm chose to pay more than SBA's maximum daily amount, say \$250 a day, the firm would pay the additional cost.

To pay for this assistance, we recommend that this bill create a Management and Technical Assistance Fund (M/TA), consisting of the current "on-call" 7(j) funds, and the dollars proposed for the Bid and Proposal Fund. As noted in Section IV, we believe the Bid and Proposal Fund works against building an in-house marketing and sales capability and its funds would be better used here. Additional revenues may be needed once the level of assistance needs is determined, and depending on the number of firms in the program.

PHASE IV: POST-GRADUATION PHASE

The first year after graduation is a year of adjustment, consolidation, and even retooling to meet the demands of the competitive marketplace. Corporate shake-ups are not unlikely as top management realigns its priorities.

The Senate Survey found some firms saying they felt "dropped" from the program. We recommend that graduate 8(a) firms be eligible for one more year of management and technical assistance, or what we could call "after-care". A portion of the M/TA Fund would be set-aside for graduates who again would be partially subsidized, at a lower rate, to purchase services in the private market.

The proposed Transitional Planning Assistance System we believe responds not only to the needs of 8(a) firms as they move toward graduation, but also to the realities and complexities of managing the 8(a) portfolio. This System can be regionalized and with some additional staff in the Office of Management and Technical Assistance, the quality of the program can be substantially improved. We believe several of the key advantages of this System are as follows:

- It links management and technical assistance to the phases of development of an 8(a) firm.

- It recognizes the importance of pre-application and post-graduation assistance to increase success rates.
- It recognizes the importance of transition planning from the very beginning.
- It is simple to administer.
- It maximizes SBA's role in supporting these firms.
- It acquaints the 8(a) firms with how to purchase services in the private market while SBA partially subsidizes the cost.
- It provides 8(a) firms with a temporary sheltered market for purchasing management and technical assistance.

In conclusion, the 8(a) program needs a mechanism to deliver its transitional planning assistance. We believe the proposed Transitional Planning Assistance System will effectively meet the needs of the program. I would be happy to assist the Committee in drafting specific bill language if this proposal is accepted.

IV: ADDITIONAL COMMENTS ON SENATE 1993

The following comments refer to other sections of the bill. I request that they be entered into the record.

Section 202. Eligibility and Certification

- o Page 7, Lines 15-20 (a) (e) (ii): I commend the Committee on requiring a 90-day certification limit. Many firms wait a year or longer to be certified. It is also important that

the Small Business Administration have the staff resources to achieve this goal.

Section 203. Graduation Standards

- Page 10: An 8 year term can work, but only if the changes we recommend for Section 303 are implemented. In addition, an 8 year fixed term will only work if the thresholds for competitive business mix are adjusted as indicated below.
- Page 11, After Line 2: Add to this section a "grandfather" clause retroactive to the date of passage of House 1807.
- Page 11, After Line 2: Add another "grandfather" clause to cover any Program "graduate" during calendar years 1988 and 1989 to be eligible for Section 303 assistance.

Section 301. Business Plans

We can only underscore the importance of this section. Business plans are now filed, however the introduction of business mix thresholds will make this document more action oriented.

- Page 18, Lines 13-18, (b) (ii) (IV): In effect, a "transition management plan" is the Participant's business plan and should be required of the Participant by the end of the fourth year as noted above. As discussed above,

Transition planning must begin well ahead of the fifth year to ensure that the business mix thresholds are met. In our experience, it takes three to four years to identify and research a competitive market niche, develop the product or service, and enter that market competitively. Furthermore, this requirement lets the Participant begin to develop a competitive capability early on in the Program, enhancing their prospects for success.

- Page 19, Line 8, (b) (iii): Delete the words "as may be appropriate" and substitute "in accordance with changes in market conditions and the Participant's strategy to become competitive."

Section 302. Competitive Bid and Proposal Cost Fund (Pages 19-21)

Program Participants must begin early on in the Program to incorporate bid and proposal costs into their annual budget as part of the overhead costs. We oppose this provision of the Act for three reasons. First, it is likely to create a new service industry of companies writing proposals for Participants, rather than encouraging Participants to build their own capacity in-house. Second, bid and proposal costs are an accepted overhead cost item, and are therefore already paid for by the contracting Agency in the cost of a contract. Third, a more effective use of the \$5 million annual authorization is to apply it to the

Management and Technical Assistance Fund discussed above, which will train 8(a) Chief Executives and their top employees on how to bid and win competitive proposals. This latter approach builds 8(a) capacity.

Section 401. Development of Business Mix Emphasizing
Competitive Contract Awards

We agree that competitive business mix goals are an essential reform. However, the proposed percentage thresholds are too restrictive and can result in a bureaucratic straight-jacket which will hurt a firm's efforts to become competitive. We support the idea of having two percentage goals of 75% at the beginning of the 6th year and 30% at the beginning of the 8th year as goals. Flexibility in application of these goals by SBA is essential since no two firms are alike.

Section 403. Contract Awards

- Page 32, (18) (D) (i), Lines 19-24: Delete this section, which penalizes 8(a) companies for doing well. If a company initially gets a small contract, this provision will keep their 8(a) contracts small, thereby defeating the purpose of the program.

Section 404. Contract Performance

In our experience, Agencies sometimes "tag" certain

contracts as being 8(a) contracts such that when a Participant graduates, the company is no longer "eligible" to perform on the contract even if prior performance has been effective. In our view this defeats the purpose of the 8(a) program and works against successful graduation. Therefore, we are recommending an "anti-tagging" clause:

- Page 36 (19) (B), After (ii), Line 20: "Federal agencies are directed not to specify, label, or indicate any contract opportunity as being an 8(a) contract such that a graduate of the 8(a) Program would be unable to compete for the contract opportunity."

Section 501. Associate Administrator for Minority Small Business and Capital Ownership Development.

- Page 40, Lines 21-25, (b) (D): Revise to read, "-edgeable about the process of starting up, managing and owning a small business, Federal procurement, contract administration, and transition from the non-competitive to the competitive markets."

Thank you for this opportunity to comment. I am prepared to discuss any of these items with you in detail, and to work with your staff as the bill moves through conference.

TESTIMONY IN SUPPORT OF S1993-MANAGEMENT ASSISTANCE

GIVEN TO: THE COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE
FEBRUARY 25, 1988

SUBMITTED BY: MARSHALL D. JOSEPH
CHAIRMAN/CEO
TECHMATICS TECHNOLOGIES, INC. (TTI)

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THE SENATE SMALL BUSINESS COMMITTEE. MY NAME IS MARSHALL D. JOSEPH. I AM PLEASED TO HAVE THIS OPPORTUNITY TO TESTIFY BEFORE THIS COMMITTEE, REGARDING S.1993. AS THE CHAIRMAN AND CEO OF TECHMATICS TECHNOLOGIES, AND A PARTICIPANT IN THE 8(A) PROGRAM, I CAN SPEAK FROM PERSONAL EXPERIENCE ON THE ONGOING NEED FOR MANAGEMENT ASSISTANCE IN THREE IMPORTANT AREAS: FINANCE, SALES, MARKETING AND ADMINISTRATION.

TECHMATICS TECHNOLOGIES WAS STARTED WITH LITTLE OR NO CAPITAL. BANKS DO NOT LOOK KINDLY UPON START-UP COMPANIES AND MOST OF US UNDERSTAND WHY. IT HAS TO DO WITH TRACK RECORD AND YEARS IN BUSINESS. MANAGEMENT ASSISTANCE NEEDS TO BE MADE AVAILABLE TO FIRMS AT THE ONSET. BUSINESS PLANS ARE CRUCIAL, THE PRINCIPALS HAVE TO UNDERSTAND WHAT BUSINESS THEY ARE IN AND WHAT THEY EXPECT TO ACHIEVE. ALL TOO OFTEN, THE FIRST TWO YEARS MOST COMPANIES ARE IN THE BUSINESS OF SURVIVAL, UNTIL THEY LAND THEIR FIRST CONTRACT. MANY FIRMS WONDER WHAT DO THEY DO NOW AND UNLESS YOU HAVE PREVIOUSLY OWED OR MANAGED A BUSINESS YOU ARE LOST. SBA HAS NOT ALWAYS BEEN ABLE TO PROVIDE ONGOING MANAGEMENT ASSISTANCE BECAUSE OF THE LARGE PORTFOLIO OF DIVERSIFIED CLIENTS THAT THEY SERVE, MANY WHO HAVE DIFFERENT NEEDS BASED ON THEIR BUSINESS DEVELOPMENT CYCLES.

TESTIMONY CONTINUES . .2

A ONE YEAR OLD BUSINESS HAS DIFFERENT NEEDS FROM A FIVE YEAR OLD BUSINESS. WHICH MAY OR MAY NOT HAVE RECEIVED ANY MANAGEMENT ASSISTANCE. SOME COMPANIES ARE RELUCTANT TO HAVE ANY "OUTSIDERS" TELLING THEM WHAT THEY SHOULD OR SHOULD NOT DO. SOME COMPANIES FEEL THAT THEY KNOW IT ALL, MANY FEEL THAT IT IS THEM -VS- THE WORLD. I PERSONALLY FEEL THAT MANAGEMENT ASSISTANCE IS VERY NECESSARY PARTICULARLY IN THOSE AREAS WHERE THE PRINCIPLES MANAGEMENT SKILLS MAYBE NON-EXISTENCE, ARE LACKING IN TERMS OF OVERALL MANAGEMENT EXPERIENCE IN A VERY CRUCIAL AREA LIKE FINANCIAL MANAGEMENT, UNDERSTANDING THE GOVERNMENT MARKETPLACE WITH ITS MYRAID OF RULES AND REGULATIONS THAT GOVERN PROCUREMENT AND CONTRACTOR PERFORMANCE.

TRANSITION MANAGEMENT IS IMPORTANT FOR THE FOLLOWING REASONS IT WILL ALLOW NEWLY CERTIFIED COMPANIES THE OPPORTUNITY TO INTERACT WITH AN ORGANIZATION THAT UNDERSTANDS THAT PARTICULARLY FIRMS BUSINESS AND WILL ASSIST THEM IN ESTABLISHING MILESTONES.

ALL TO OFTEN 8(A) PROGRAM PARTICIPANTS ARE STIGMATIZED AS FIRMS WHO ARE LIVING OFF THE FAT OF THE LAND, ARE NOT SERIOUSLY COMMITTED TO BUILDING VIABLE, SOUND FIRMS THAT CAN COMPETE IN THE NON 8(A) SECTOR- I DISAGREE. I FEEL THAT FIRMS NEED TO BEGIN PREPARING TO COMPETE FROM THE VERY BEGINNING, WHEN THE PROGRAM WAS INITIATED IN 1969, VERY FEW EVER THOUGH THAT THEY WOULD HAVE TOO. I PERSONALLY FEEL THAT 8(A) FIRMS CAN COMPETE, BID AND WIN CONTRACTS USING THE SAME TOOLS THAT ARE AVAILABLE TO OTHER FIRMS. THAT IS: (1) FINANCING (2) A STRONG KNOWLEDGE OF FEDERAL PROCURMENT RULES AND REGULATIONS (3) TOP NOTCH MARKETING (4) A SOLID MANAGEMENT AND (5) A PRODUCT OR SERVICE THAT THERE IS AN ONGOING NEED FOR. 8(A) CEO'S ARE JUST AS SERIOUS ABOUT THEIR BUSINESS AS OTHER EXECUTIVES ARE, AND OUR EXPERIENCES ARE OFTEN SIMILAR.

TESTIMONY CONTINUES..3

So, IN SUMMARY, I WOULD ENCOURAGE THAT S.1993 REFLECT A STRONG
MANAGEMENT ASSISTANCE COMPONENT THAT IS ONGOING THROUGH THE ENTIRE
8(A) PARTICIPATION PERIOD, WITH THE EMPHASIS BEING ON PREPARING
TODAYS FIRMS FOR TOMORROW.

THANK YOU!

Senator KERRY. Well, staff has told me of the excellent transition management guide book that you have put forward. I think it is a very good concept and it seems to be exactly the kind of technical assistance that can ensure post-8(a) success and it makes a lot of sense.

How we actually tie it in is perhaps the question. Let me ask you this. Are there problems that we have not faced up to with respect to the ability of companies to succeed afterwards or to compete that you haven't seen us yet address or focus on in terms of this legislation?

Dr. MARSHALL. I think the critical issue that the survey raised was the issue of the firm's feeling that they were being dropped from the program. What we are suggesting here with Phase IV of our proposal system is what we can call "after care," that there does need to be a minimal amount of hand-holding after graduation so that there is access to management/technical assistance through some kind of subsidy arrangement. The point is in this approach to transition planning, what you are able to do is to have the exposure to the transition process and to competition much earlier on in the program than you are getting right now.

I think you eliminate 90 percent of the problems that we have experienced in the program up to so far.

Senator KERRY. Mr. Henderson, what would your attitude be about that? Why have so many companies failed to be able to make it afterwards because of lack of this kind of transitional effort, simply the lack of demand for their focusing on the future or what?

Mr. HENDERSON. I sometimes wonder if the SBA was selective in who they allowed or chose for the program in the first place. In other words, did the company have a potential for success before they were admitted into the program? I think you will get a better average if you do a little more careful screening at the beginning.

Our company was in business approximately 7 years prior to being brought into the program and as of this year alone or I think this year, we are doing about 25 percent 8(a) work, 75 percent non-8(a) work. We are probably going to do close to \$2 million worth of work this year. We are a small company of 22 employees. So we were probably going to make it as a business regardless of 8(a) or non-8(a) but 8(a) has helped us to get a little bit of a boost, get a little work in the gap so we have gotten more competitive because now we are on open market bonding where we can purchase our bond at 1.4 percent as opposed to 2.5 percent. Now we can be a little more competitive in the open market than the companies who must buy at 2.5 percent. The majority of large companies can buy bonds at ½ percent. We are down to 1.4 percent for the cost of bonding. A typical 8(a) contractor has to pay 2.5 percent for a bond so he can't compete.

Even if all the numbers were equal, the additional percentage for his bond would throw him out of the ballgame.

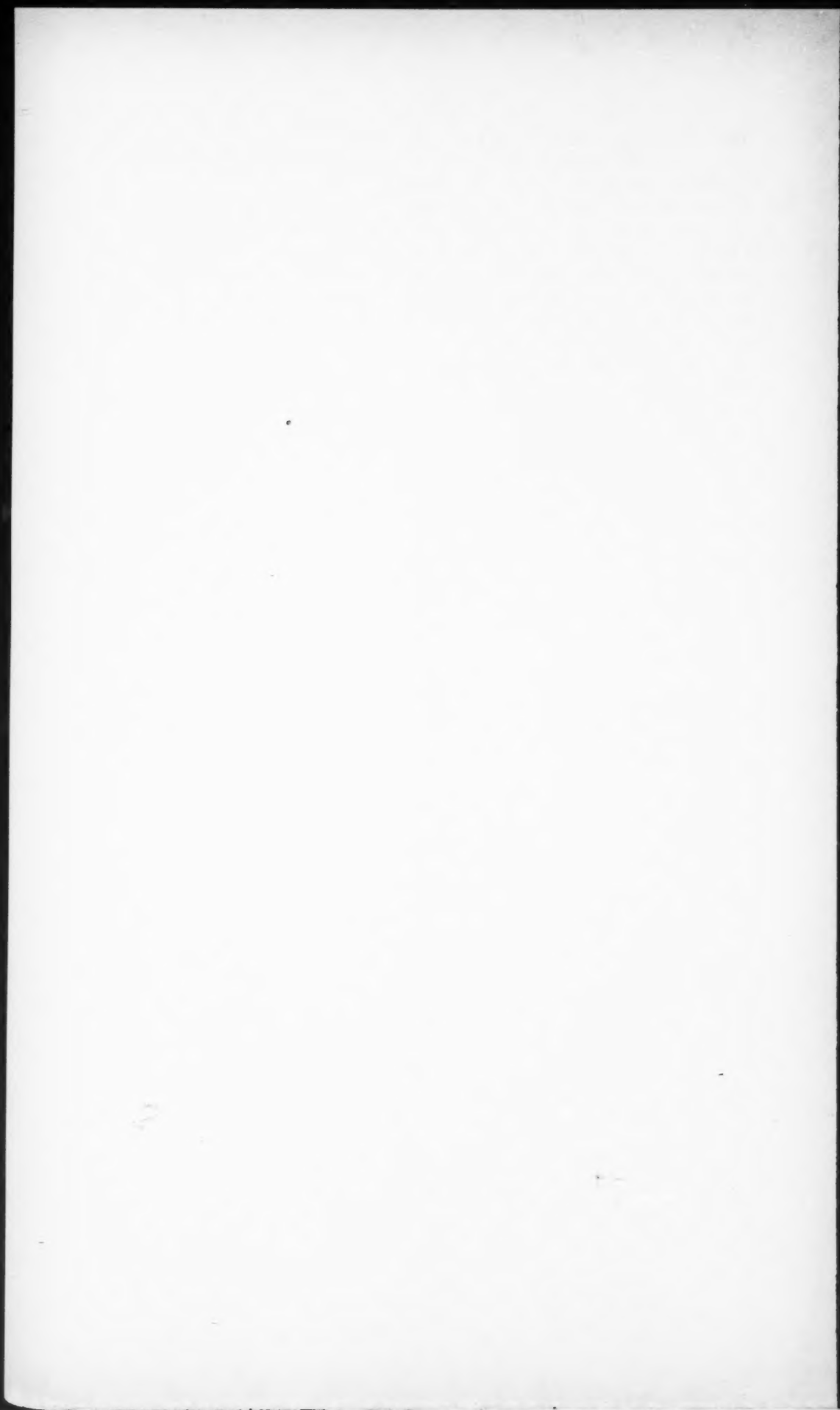
Senator KERRY. It is clear we have to look at the bonding question and we are going to do that, among many others that have been raised. I apologize profusely for having to end this abruptly. I don't like to do that but I have to go vote. We are at the back end of a vote now and I have to go to that meeting.

We will leave the record open for any additional questions that will be written and I really want to thank you very, very much for important testimony. This is helpful.

As you know, I think you have been following this, this has been a series of hearings. The Chairman and the minority and Ranking Member are committed to moving something, as I am and other Members, and we just are going to have a lot of work to do over the course of the next week to pull it together and try to have as even-handed an approach as possible but you have been helpful and we thank you for that.

We stand adjourned.

[Whereupon, at 3:55 p.m., the Committee adjourned.]



A P P E N D I X

STATEMENT

BY

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO

THE COMMITTEE ON SMALL BUSINESS

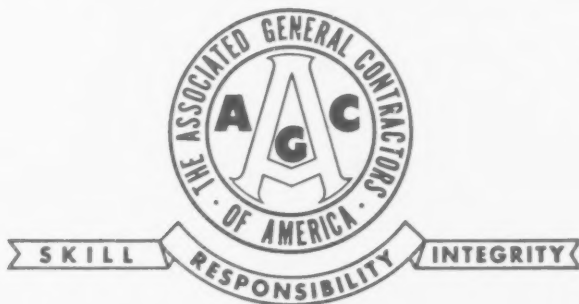
OF

THE UNITED STATES SENATE

ON

S.1993

THE "MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987"



AGC:

- More than 32,500 firms, including 8,000 of America's leading general construction contractors, responsible for the employment of more than 3,500,000 individuals;
- 104 chapters nationwide;
- More than 80% of America's contract construction of buildings, highways, industrial facilities, and municipal-utilities.

March 3, 1988

Having been denied the opportunity to present testimony before the Committee on Small Business, the Associated General Contractors of America submits this statement and requests that it be made part of the hearing record on S.1993, the "Minority Business Development Program Reform Act of 1987." The Associated General Contractors of America has consistently opposed the 8(a) Program, and it continues to do so. That program wastes federal resources. It is fundamentally-unfair to every business that it excludes. And it has consistently failed to satisfy even its own criteria.

Unrestricted competition for federal construction contracts continues to be:

- o the most efficient means of allocating scarce federal construction dollars;
- o the best barrier to racial discrimination in the award of federal construction contracts; and
- o the strongest incentive for all enterprising Americans to enter the construction industry, and to succeed.

Even the sponsors of S.1993 admit that the 8(a) Program has failed. The program "has been crippled by fraud and mismanagement." 133 Cong. Rec. S18788 (daily ed. December 21, 1987). "High-ranking Government officials have been indicted for directing contract awards to benefit firms in which they have an

interest, as exemplified by the Wedtech scandal." Id., at S18789. "As many as 30 percent of firms probably go out of business after graduation." Id. The Small Business Committee's own survey of the firms that graduated from the program between 1982 and 1986 found that "a large number of owners who were still operating" believed that "the 8(a) program did not significantly contribute to their ability to survive." Id., at S18797 (emphasis added).

The sponsors of S.1993 have made a good case, but not for reform of the 8(a) Program. They have made a good case for its complete repeal. The Associated General Contractors of America urges Congress to relieve the construction industry of this legislative and regulatory embarrassment. However well intentioned, yet another effort to reform the 8(a) Program will only prolong the waste, the racial discrimination, and the bitter disappointment.

INTOLERABLE WASTE

No one would seriously dispute that the 8(a) Program increases the cost of federal construction. Nor would they dispute that the Small Business Administration (SBA) has been more than content to leave the amount of this waste difficult for Congress to determine. The facts that are available suggest that the amount would stagger the American taxpayers.

Under the 8(a) program, the SBA and federal procuring agencies agree to remove contracts from the open competitive bid system and sole-source negotiate the contracts with "socially and economically disadvantaged small business firms."

Since 1968 the SBA has used the 8(a) program to channel over \$4.7 billion in federal construction contracts to "socially and economically disadvantaged" firms.

The 8(a) program, designed to provide an initial "protected market" for "disadvantaged" firms, has proven to be a dismal failure. A 1981 General Accounting Office report, and a 1987 survey by the Senate Small Business Committee reveal that approximately 325, or 9% of the 3,600 "disadvantaged" construction firms participating in the 8(a) program from 1968 to 1987 actually graduated from this failed program.

The ongoing Wedtech case is demonstrative of the abuses inherent in a system that is the antithesis of competition. That scandal has been in the headlines of every newspaper in America but involves only one 8(a) firm. The multi-millions of taxpayer dollars thus squandered pale into insignificance alongside the \$4.7 billion of taxes used to fund a special preference construction program from which only 325 of 3,600 have graduated in 20 years.

The cost impact of the 8(a) program is substantial.

While the 8(a) negotiation process precludes any comparison with prices available through open competitive bidding, AGC has had several instances brought to its attention where procurement agencies decided, for a variety of reasons, to reject the 8(a) offer and instead solicit bids through the open competitive bid system, thus allowing valid cost comparisons. Examples:

Project Initially Proposed To Be Negotiated Through the 8(a) Program	Saving Through Open Competitive Bidding
Highway relocation Elephant Butte Idaho (Federal Highway Administration)	The 8(a) negotiated price was \$3,024,000; the low competitive bid was \$2,355,000. \$669,000 (22%)
Environmental test facility, Yuma, Arizona. (Army Corps of Engineers)	The 8(a) price was \$1,839,872; the low bid was \$1,558,884. \$280,988 (15%)

Flood wall project	The 8(a) price was	\$227,050 (55%)
Delta, Louisiana	\$416,000; the low	
(Army Corps of	bid was \$188,950.	

Water supply project	The 8(a) price was	\$226,188 (39%)
Riverton, Wyoming	\$580,000; the low	
(Bureau of	bid was \$353,812	
Reclamation)		

The \$1.4 million which would have been saved on these four projects - 24 percent of the proposed 8(a) prices - represents only a small fraction of the tax dollars that could be saved on federal construction projects if construction were removed from the 8(a) program. In FY 1986, federal construction agencies negotiated \$436 million in 8(a) contracts. In FY 1987, over \$635 million in 8(a) construction contracts were negotiated. It is reasonable to project that over \$200 million could have been saved had the government awarded these projects through open and unrestricted competitive bidding.

The question has to be asked and answered, "In a nation that has 456,700 construction firms (a reasonable indication to any reasonable person that construction is both an open and competitive industry), has Congress overburdened SBA in permitting it to decide which 3,600 construction enterprises of the more than 456,700 establishments that exist are socially and economically disadvantaged?"

The question has to be asked and answered, "How much of the \$4.7 billion dollars awarded to SBA's 8(a) construction firms was waste?"

If the most conservative estimate of 15% waste is used, the waste of tax dollars was \$705 million, which would average out to \$195,800 for each of the 3,600 construction firms in SBA's 8(a) program.

If, as is more likely, SBA's 8(a) program resulted in average increased costs of 30%, the real cost to have 3,600 construction firms in this SBA special preference procurement program averaged \$391,600 for each firm.

These questions have to be asked and answered:

- o Would Congress or the American public tolerate giving a \$195,800 or a \$391,600 outright grant to each firm that regards itself as worthy of SBA's largesse? Ridiculous as that suggestion is, it would save taxpayers a substantial part of the SBA administrative cost to taxpayers of \$778 million in FY 1989.

- o What is the real cost to taxpayers, and the hundreds of thousands of small family owned construction firms excluded from participation in government construction procurement, by the very existence of SBA's preferential programs?
- o Does not the existence of 456,700 construction establishments in the United States suggest that the SBA, and Congress, look elsewhere to help ensure maximum competition in America?

Notwithstanding the great and still increasing concern over the federal deficit, S.1993 would allow this waste to continue. Section 403 of the bill recognizes the value of competition, but only in principle. The competition that it requires would be rare, and even then, it would be severely restricted. Section 403 is no substitute for the complete repeal of the 8(a) program. Indeed, it would be ludicrous even to compare the two.

Section 403 requires competition for federal construction contracts that exceed \$2 million. The Administrator for Federal Procurement Policy has already testified that "at most 247 procurements could have been competed during FY 87," using that \$2 million threshold. (Statement of Robert P. Bedell, before the Committee on Small Business, United States Senate, Concerning S.1993, at 18; February 2, 1988)

At a bare minimum, the Small Business Committee should amend S.1993 to require the SBA to determine, to monitor, and to publicly disclose, the additional costs that the 8(a) Program imposes on federal procurement activities. Section 505 of the bill would require the SBA to collect a wide variety of data, but not anything that would reveal the true cost of the 8(a) Program to the American taxpayers.

The coming years are sure to witness intense debate over the need for federal tax increases. At a bare minimum, the Small Business Committee has a responsibility to tell the American taxpayers just what they are paying for the 8(a) Program. How many more research or aerospace facilities could be built? How many more hospitals for American veterans?

With Social Security and other major federal programs facing the stark reality that the federal government's income is at least \$150 billion short of its expenses, the country simply cannot afford to pour enormous sums into a program that even its supporters have found to be ineffective.

INTOLERABLE RACIAL DISCRIMINATION

An odious feature of the 8(a) Program is its racial bias. The entire program hinges on inherently invidious racial classifications.

Nowhere in the Supreme Court's many decisions will Congress find any support for a permanent program of racial patronage. Even if one were to assume that the 8(a) Program sprang from remedial instincts, the fact remains that the program is already twenty years old.

The program's impact on innocent third parties, and particularly on the non-minorities who are also struggling to start a business or stay in business, is already all too well understood by those firms denied market opportunities as a consequence of the 8(a) program. That impact is often compounded by the ways in which the procurement agencies participate in the 8(a) program.

Army policy, for example, requires the Corps of Engineers to "reserve" for the SBA any projects which they deem to be "susceptible" to performance by 8(a) firms. This has resulted in the "reservation" of undue numbers of contracts for the SBA. In turn, SBA has taken many months to place projects with 8(a) firms. For example, in 1981 the Vicksburg District of the Corps

of Engineers reserved its entire procurement list for a major part of the construction season for the 8(a) program. The total estimate for these projects was \$28 million -- "reserved" to meet a \$6 million "goal." Also in 1981, the Corps of Engineers Lower Mississippi Valley Division "reserved" 81 projects valued at \$87 million, and the four Ohio River Districts "reserved" 89 contracts valued at \$78 million.

While much of this work was not awarded to 8(a) firms, and was eventually returned to the open competitive market, the impact was still devastating, and resulted in small business contractors, not eligible for the 8(a) program, having to file suit in federal court, to protect their abused constitutional rights.

Regrettably, the blatant injustices that we believe exist in the foregoing SBA actions continue rampantly even today. What offense has been committed by construction contractors in Illinois who are today being denied the opportunity to bid on construction projects at Scott Air Force Base? Here is what the members of the Southern Illinois Builders Association told members of the Illinois congressional delegation just last month:

Several times over recent months a problem has been brought to your attention that affects numerous contractors in Southwestern Illinois that have traditionally participated in the federal procurement process. As a result of recent legislative changes and a Department of Defense directive, contractors find themselves precluded from the federal construction procurement process at Scott Air Force Base.

The SBA 8(a) special preference set-aside program in this instance has no doubt unfairly interfered with the free enterprise system and increased the cost of projects to the taxpaying public. While the intent may well have been to see that SDB concerns receive a "fair proportion" of the contracts, effectively all contracts at SAFB are being so set aside. The result is that other contractors that would be called "small" by SBA standards are being denied the opportunity to compete.

It is open, unrestricted competition that provides the assurance to taxpayers that tax monies are being spent in the most efficient, economical manner possible. Several contractors can provide evidence that the 8(a) program has resulted in significant additional costs for construction projects at SAFB.

We ask for a meeting with you as soon as possible to discuss the advantages of an unrestricted, open competitive federal construction procurement process; how the current "protected market" concept is inequitably denying contractors the right to make a living; and how the 8(a) program is inherently doing exactly what it professes to prevent, fostering the most onerous form of discrimination against qualified contractors.

TO WHOM DO THEY TURN FOR RELIEF? DOES CONGRESS CARE?

It is impossible for a construction firm to do any future planning, and to decide which projects it will bid, if it cannot be sure what work will be available. Even if all of these contracts were eventually turned back for open competitive bid, "reserving" them en masse for an indefinite time period played havoc with the contractors' projection of their workforce needs and equipment requirements.

This is particularly hard on the small contractor who is not able to provide for these contingencies. Reducing the market

this significantly, even for a short period of time, can bankrupt fledgling enterprises. This fact notwithstanding, the SBA and the federal construction agencies continue to "reserve" an inordinate amount of their procurement programs for the 8(a) program, placing a tremendous burden on innocent small business firms whose markets are so arbitrarily put "off limits."

S.1993 is no substitute for the complete elimination of this racially biased burden on innocent third parties.

INTOLERABLE FAILURE

The 8(a) Program is fundamentally flawed. It was a bad idea twenty years ago. It is a worse idea today. The President of the National Academy for Public Administration has already testified that the program's "assignment would be difficult for a group of MBA graduates from Ivy League Schools." (Testimony by Ray Kline, before the Committee on Small Business, United States Senate, on the NAPA Study for SBA, at 3; February 2, 1988)

The program has failed to foster new businesses in the construction industry for the more specific reason that it ignores the competitive realities of the industry. Racially segregating minorities, in a separate and protected federal market, where competitive pressures are unknown, cannot possibly give them the experience or the skill that they will need to

succeed, in the face of the unrestricted competition that exists in the open marketplace.

The dominant feature of the construction industry is the competitive bid system, which awards contracts to the lowest responsive bidder. Owners benefit from this system. They get top quality work for the lowest possible price. Contractors benefit from the assurance of an equal opportunity to compete.

To survive in the construction industry one must learn to be competitive. One must learn to submit the lowest bid. Yet, the 8(a) program, the stated purpose of which is to "promote the competitive viability of socially and economically disadvantaged firms," has never required firms to be competitive. It has never required firms to submit the lowest bid.

Surveying the market of available work, deciding which projects are within the firm's capabilities, estimating the projects, obtaining bonding, soliciting competitive subcontract bids and supply quotes, and finally preparing a bid are the skills which are needed to become competitive in construction. The 8(a) Program to develops none of these skills.

CONCLUSION

The Associated General Contractors of America again urges Congress to repeal the 8(a) program -- not because of any question of the good intentions of those in Congress who share our beliefs and the nation's ideals to help the disadvantaged in our society. Instead, we urge its repeal because the program is a demonstrably wasteful failure. The abuses that have surfaced in it are structured in its very foundations as a special preference program.

Those who can best demonstrate their skills at securing special preference status will continue to benefit from the 8(a) program. Those who want to demonstrate their skills by delivering services will continue to be disadvantaged by the special influences that are inevitably part and parcel of special preference programs.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

MAR 7 1988

Honorable Dale Bumpers
Chairman
Committee on Small Business
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to testify before you and the Members of the Committee on Small Business on S. 1993, the "Minority Business Development Program Reform Act of 1987." I also appreciate your letter to me following the Hearing concerning S. 1993. We are anxious to help you and the Committee in anyway that we can. As I stated during my testimony, the Office of Federal Procurement Policy supports your efforts to reform the Minority Business and Capital Ownership Development program.

During the hearing, former Congressman Parren Mitchell expressed concern about proposed revisions to Office of Management and Budget Circular No. A-102, entitled "Uniform Requirements for Assistance to State and Local Governments." For the last 17 years, this Circular has established the procurement policies to be followed by those who receive Federal grant funds when they procure goods and services using Federal funds. According to Mr. Mitchell, the revision to this Circular reversed the policy that encouraged grantees to contract with minority business enterprises. He also charged that the revision indicated a lack of support for minority business enterprise within the Administration.

When you asked us about the Circular, we replied that we were not completely familiar with it because we had not written it, but that we believed that the changes were intended to reduce Federal constraints on State and local governments. The purpose of this letter is to provide you with additional information regarding the revised Circular and its implementation as it pertains to minority business enterprises.

Because many of its provisions were out of date, and because of omissions, and inconsistent interpretations of OMB Circular No. A-102, the President directed all affected agencies, on March 12, 1987, to simultaneously propose and subsequently adopt a common rule to replace existing agency actions to implement the Circular. After extensive coordination with OMB, 23 Federal agencies published for public comment on June 9, 1987, a proposed

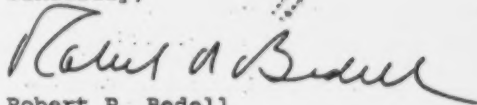
single common rule for grants to State and local governments. On that same date, the proposed revisions to the Circular that Mr. Mitchell referred to were published for public comment. One of those revisions was to delete policy language regarding the award of a "fair share of contracts to small and minority business firms."

We have now completed the review of public comments on the Circular, and the Director of the Office of Management and Budget has decided not to delete the language concerning the policy encouraging grantees to award a fair share to small and minority business.

I can assure you that the long-standing support for strengthening and broadening the base of minority business enterprise in this country remains.

I hope this information is useful.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert P. Bedell", written in a cursive style.

Robert P. Bedell
Administrator

PETER AND RANGEL CONSTRUCTION SERVICES, INC.

P O BOX 3360 • 19 MAIN STREET • RAPID CITY, SOUTH DAKOTA 57709 • PH. 605-343-2727

February 24, 1988

Honorable Senator Larry Pressler
SR 411
Washington, DC 20510

Dear Larry,

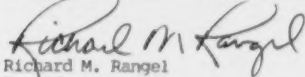
Please introduce this letter, on my behalf, into the hearings currently being held on Senate Bill - S1993. As I understand it, this bill is directed at reform of the Small Business Administration's Section 8(a) Program. Since I am presently an SBA 8(a) Certified General Contractor I am directly affected by this legislation.

I wish to state that I have reviewed Senate Bill - S1993 and House Bill 1807 and highly commend both committees on their diligence and conclusions. I whole heartedly endorse the reform recommendations advanced by both of these bills. I do not see great differences in both bills and would hope that a final piece of legislation will result and be enacted in the immediate future.

Thank you for your efforts.

Sincerely,

PETER AND RANGEL CONSTRUCTION SERVICES, INC.


Richard M. Rangel
President

RMR/pr



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 17, 1988

Honorable Dale L. Bumpers
Chairman
Committee on Small Business
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This provides the views of the Department of Justice regarding H.R. 1807, a bill to amend the Small Business Act. For the reasons that follow, we recommend against enactment of the bill.

The bill provides for various changes in the administration of the Capital Ownership Development Program through which the Small Business Administration ("SBA") provides contracting opportunities and other assistance to disadvantaged businesses pursuant to section 8(a) of the Small Business Act. We defer to SBA with regard to the programmatic aspects of the bill. The bill contains, however, several provisions that could subject the government to substantial liability.

Section 7 of the bill provides, among other things, for waivers of the payment required by 40 U.S.C. § 270a ("Miller Act"). These bonds provide assurance to subcontractors and suppliers that they will be paid for goods or services furnished in connection with a government contract. As the United States Court of Appeals for the Seventh Circuit noted in a recent case, the payment bonds serve an important function, because subcontractors and suppliers cannot assure payment by obtaining liens upon a government construction project, as they could upon a private construction project. Arvanis v. Noslo Engineering Consultant, Inc., 739 F.2d 1287, 1288-89 (7th Cir. 1984). The provision for waivers of the payment bond requirement would remove this important protection in instances where it may be most needed -- contracts with small and disadvantaged businesses without a proven record. The result could well be a reluctance upon the part of subcontractors and suppliers to conduct business with a section 8(a) firm. Thus, waivers of the payment bond requirement could deny the section 8(a) firms access to important business opportunities.

Beyond this, the provision possesses the potential to subject the government to substantial liability to claims by unpaid subcontractors and suppliers. Among the conditions for the grant of a waiver of the bond requirement is a requirement that SBA take such measures as it deems appropriate for the protection of persons furnishing materials and labor to the section 8(a) firm. In the past, the government has been successful in defending suits instituted against it by unpaid subcontractors and suppliers. Because the Miller Act imposes no affirmative duty upon the United States and there is no contractual relationship between the government and subcontractors or suppliers, courts have found that there is no basis for government liability. See Arvanis v. Noslo Engineering Consultants, Inc., *supra*. Where the government is required to take affirmative steps to protect subcontractors and suppliers prior to waiving compliance with the Miller Act's requirement for payment bonds, however, there is a significant risk that courts would hold that the government must assume responsibility for the risk of nonpayment. Such a result would be costly to the government, in terms of both monetary liability and the creation of very unfavorable precedent.

A second provision which would subject the government to substantial additional costs is the requirement, contained in section 16(c) of the bill, that the government terminate for convenience section 8(a) contracts if the owners upon whom section 8(a) eligibility was based relinquish control of the firm. While we agree that the benefits of the section 8(a) program should not be enjoyed by ineligible concerns, requiring the government to terminate contracts for convenience is not an appropriate mechanism for attaining this goal.

As an initial matter, we note that the section makes no provision for continuing the contracts where termination would not be in the best interests of the government. Thus, under the provision as drafted, the government would be required to terminate contracts even if the goods or services could only be reprocured at a higher price or if termination would delay or disrupt important government objectives. Additionally, the government's termination of a contract for convenience entitles the contractor to recover the costs it has incurred in performing the contract to the date of termination and necessary preparation costs, as well as a reasonable profit upon those costs. See generally 48 C.F.R. §§ 49.105, 49.109. Because of this, the government could be required to pay substantial sums to companies whose contracts were terminated because they were no longer controlled by eligible individuals. At a minimum, in order to avoid this problem, the bill should be amended to provide that the termination of a contract because of a loss of eligibility should be at no cost to the government.

The Department also objects to the proposal for antitrust immunity for joint ventures among small business firms and others that is contained in the bill. This immunity, which would be contained in proposed new section 7(j)(13)(G) of the Small Business Act, is derived from an existing provision in the Small Business Act that covers joint programs for research and development (15 U.S.C. 638(d)), and it raises several potentially serious concerns.

First, the proposal is decidedly regulatory: initial and continuing approval depends on potentially expensive government oversight. Second, the standards for approval of a joint venture are broad and not well focused. No joint venture that is actually anticompetitive should be protected. Third, the scope of the immunity is vague and open-ended. The joint ventures it covers are not well defined, and clearly anticompetitive activities such as bid-rigging or price fixing might arguably, if inadvertently, be protected.

Perhaps a more basic concern is whether any new antitrust immunity especially for small business joint ventures is appropriate. Joint ventures, unless they are shams covering naked price fixing or bid rigging, rarely present competitive problems, and generally do not violate the antitrust laws. If there is a perceived antitrust problem with certain types of procompetitive joint ventures that is unreasonably deterring their formation, the problem would be better addressed through legislation of general applicability.

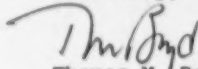
Where a case has been made that there is a perceived antitrust problem with some kinds of joint ventures, Congress recently has used a far less intrusive way of eliminating any unreasonable antitrust deterrent. The National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq., defines with care the kinds of joint research and development ventures it covers, declares the applicability of the antitrust "rule of reason" to such ventures so that they will not be condemned out-of-hand without a full evaluation of their procompetitive benefits, and limits possible liability to actual, rather than treble, damages if the antitrust enforcement agencies are notified in advance of the joint venture's activities. This has been a very successful statute -- over 100 ventures have already filed notifications under it.

If Congress determines that there is an unreasonable antitrust deterrent to procompetitive joint ventures, we would recommend addressing the problem generally, not just as it affects small business, and use of the far preferable NCRA model. I would also add that the Administration will soon be forwarding to the Congress its proposal in connection with the President's superconductivity initiative for extending the NCRA's coverage to certain joint production ventures.

For the ongoing reasons, the Department of Justice recommends against enactment of this legislation.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in dark ink, appearing to read "T. M. Boyd". The signature is fluid and cursive, with the first and last names being more prominent than the middle initial.

Thomas M. Boyd
Acting Assistant Attorney General



TECHNOLOGY APPLICATIONS, INC.

6101 STEVENSON AVENUE
ALEXANDRIA, VIRGINIA 22304

February 1, 1988

703 461 2000

Senator Dale Bumpers
Committee on Small Business
United States Senate
428-A Russell Senate Office Building
Washington, D.C. 20510-6350

Dear Senator Bumpers:

We appreciate the opportunity to submit our comments and suggestions concerning S. 1993. As an 8(a) firm, we are very interested in providing the Committee with constructive suggestions for improvements in the operation and administration of the Program.

We believe that S. 1993 provides for many needed improvements in the 8(a) Program. However, there are several provisions in the bill which would seriously undermine the continued viability of many existing 8(a) firms, restrict the development of new firms entering the Program, and discourage others from applying to the Program. Our detailed comments are attached. We also endorse the comments submitted by the Coalition for Small Minority Business on this bill.

Thank you for the opportunity to provide our comments and insights on this important legislation.

Sincerely,

A handwritten signature in dark ink, appearing to read 'James I. Chatman', is written over a horizontal line.

James I. Chatman
President

Attachment

MEMORANDUM

TO: Senate Small Business Committee

FROM: Technology Applications, Inc.

RE: Selected Comments to S. 1993

Section 403, Paragraph D(1) (Inability of 8(a) firms to be awarded contracts in excess of 150% of their last largest contract)

Comment: There is no logical reason for arbitrarily restricting a company's sole source awards to contracts smaller than 150% of the last largest contract awarded. Given the brief period of time proposed for eligibility within the 8(a) program (8 years), and given the bill's stated desire to foster minority business development, an arbitrary cap on what size contracts a firm can be awarded can only act to artificially restrict its growth and development.

As you know, 8(a) contracts are awarded after substantial investment of time and money in identifying, qualifying and marketing a given procurement. If an 8(a) firm is capable of performing the work and has the skills to convince a government customer of its abilities, we can think of no principled reason why that firm should be denied that contract simply because it is 150% larger than their last largest award. This provision arbitrarily regulates an 8(a) firm's growth without any rational need to do so. It also penalizes companies instead of rewarding them for developing technical capabilities and marketing skills needed for winning larger procurements.

Section 403, Paragraph E (Restrictive thresholds on sole source contracts)

Comments: By including the value of all options into the calculation of what contracts must be competed in the 8(a) program, Section 403(E) effectively makes the entire 8(a) program a competitive program. All contracts with a yearly value of more than \$250,000 per year will have to be competed.* This, in turn, has several serious negative effects:

1. This will benefit the larger, more established 8(a) firms who have managed to develop an organizational infrastructure and lower their costs. Companies newly entering the program will be consistently underbid by larger, more experienced firms.

* Assuming a service contract with a base year value of \$250,000 with four option years of the same value; total value of \$1 million.

Therefore, the threshold for competed contracts should be raised to at least \$1 million, per year, or \$5 million, over the life of the contract, excluding options. Otherwise, firms just entering the program will always be at a competitive disadvantage in winning contracts large enough to allow them to grow and develop competitively.

2. This unduly low threshold of \$1 million removes much of the time advantage that 8(a) contracts have in the eyes of procurement officers. The speed and ease of an 8(a) procurement was one of its greatest selling points in persuading agencies, who were otherwise reluctant, to do business with minority firms. Now that all but the smallest contracts must be competed, there will be little difference in their eyes between the 8(a) program and a totally unrestricted competition. This will likely result in a greater reluctance on the part of procurement officers to request that requirements be included in the 8(a) program.
3. Finally, a virtually competitive 8(a) program is fundamentally inconsistent with the bill's restriction on the sale of 8(a) businesses (Section 404). Such a restriction can only be justified to apply to 8(a)'s and not to other small businesses if one assumes 8(a) contracts are not competed and other small businesses' contracts are competed. This certainly is no longer the case under this bill. Such differences in treatment between 8(a) and other non-8(a) small businesses raise serious questions about the legitimacy and even-handedness of such a provision. Placing restrictions on the sale of 8(a) companies which have competitively won their business base is unfair to minority business, demeans their accomplishments and limits their ability to finance their growth.

Section 401 (Strict goals for 8(a) versus non-8(a) business)

Comment: It is totally unrealistic to expect new start-up companies, which are struggling to compete with larger firms within the 8(a) program, to simultaneously obtain half of their revenues from unrestricted business by the end of their sixth year. The penalty for failing to cross this unrealistically high hurdle (i.e., the withdrawal of 8(a) support) will effectively put companies out of business while they are still nominally in the program.

Section 403, Paragraph F (Ability of 8(a) firms to compete for incumbent contracts once they have graduated from the program)

Comment: This section is truly a major improvement in the program and should be retained in the bill. It recognizes the basic business reality that any company, 8(a) or non-8(a), which is not allowed to compete for its business base has a higher probability of failure than one that can

build on what they have already won. It is fair to allow graduating S(a)'s a chance to win their contracts competitively, instead of forcing them to hand them over to another firm the basis of their future survival.

Section 202 (90-day period for processing S(a) applications)

Comment: Likewise, this provision is a major improvement and should be retained. Businesses require certainty. The present waiting period of almost two years for rendering decisions regarding S(a) applications makes sensible business planning impossible.

PETER AND RANGEL CONSTRUCTION SERVICES, INC.

P O BOX 3360 • 19 MAIN STREET • RAPID CITY, SOUTH DAKOTA 57709 • PH 605-343-2727

April 13, 1988

The Honorable Larry Pressler
 United States Senate
 407A Russell Senate Office Building
 Washington, D.C. 20510

Dear Senator Pressler:

I am pleased to continue to serve on your small business advisory committee for South Dakota and as a member of the committee and as the owner of a minority small business, I am writing to you regarding legislation currently pending before the Senate Small Business Committee to revise the Small Business Administration's Minority Small Business and Capital Ownership Development Program, most commonly known as the Section 8(a) Program. This legislation, S. 1993, contains some very positive features intended to increase federal contracting with minority businesses. I stated my support for this legislation in an earlier letter to you. I know that as a member of the Small Business Committee, you will work to be sure that these positive provisions are retained.

One provision of S. 1993 pertaining to the length of time that firms are permitted to participate in the program with an appropriate transition period for firms currently in the program and including recent graduates, is of particular concern to me as my firm is currently scheduled to graduate from the 8(a) program on June 23, 1988, after a five year period of participation in the program.

Specifically, S. 1993 would increase the term of possible participation in the 8(a) program from a maximum 7 years to a maximum 8 years. While this increase in term is helpful, I am convinced that the term is not long enough, particularly given the bill's introduction of competition into the 8(a) program. A ten year program would provide a more realistic opportunity for firms to achieve competitive viability upon leaving the program. None the less, my firm will currently receive much less time than any of the program proposed terms.

The Senate Small Business Committee's own survey is strong support for the fact that a ten-year term is more reasonable and would increase the likelihood of firms continuing as successful firms post-graduation. A study conducted for the SBA by William Casey, "The Casey Report", says that most small businesses require a period anywhere from 8 to 12 or 14 years to become competitive. This is even more true for minority businesses which have additional hurdles to overcome. In fact, as recently as last week my bonding surety stated that my firm was still in a "probationary" period even though we have successfully completed contracts for over 8 years.

The Honorable Larry Pressler
Page 2 Continued

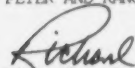
In addition, and of great importance to my company, a reasonable transition period for current program participants and recent graduates must be included in the legislation. The firms participating in the 8(a) program as of January 1, 1987 should be permitted to continue participation in the program for either their current unexpired term plus three years or ten years less the number of years since the award of the first significant 8(a) contract, whichever is longer. Firms such as mine that participated in the program for only a few years but will most likely be graduated prior to date of enactment of the legislation should be provided for under the legislation. Of special concern are those firms which did not receive the current maximum FPPT of seven years. Most received 5 or 6 years because of arbitrary decision making processes used by the SBA. In fact, the SBA states that no appeal of their final decision will be accepted. These firms should be provided with an opportunity to develop under the new legislation. Additional time in the program does not automatically mean that firms will qualify for additional 8(a) contracts. Nor does it mean that the SBA will provide contract support since the SBA does not guarantee contract support. Firms that have exceeded the size standards in their particular industries are no longer considered to be small and therefore do not qualify for 8(a) contracts. This "self-graduating" mechanism is an adequate safeguard and lends support to an increased program term with a reasonable transition period.

I have recently become a member of the Coalition for Minority Small Business which has been actively working to have a positive input on changes being made to S. 1993. I am enclosing a briefing paper and a proposed amendment prepared by the Coalition that discusses these issues. I am planning to be in Washington, D.C. on April 20 and 21, 1988 and would appreciate the opportunity to discuss these issues with you at that time.

Thank you very much for your attention to this matter.

Sincerely,

PETER AND RANGEL CONSTRUCTION SERVICES, INC.



Richard M. Rangel
President

RMR/pr

Enclosure

BRIEFING PAPER

SUPPORTING AMENDMENT OF THE LENGTH OF PROGRAM PARTICIPATION
AND TRANSITION RULE PROVISION (SECTION 202) OF S. 1993,
THE "MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987"

TO PROVIDE FOR A TEN YEAR PERIOD OF PARTICIPATION

AND

A REASONABLE PERIOD OF TRANSITION FOR CURRENT PROGRAM
PARTICIPANTS AND RECENT GRADUATES BY ALLOWING FIRMS
TO SELF-DESIGNATE PARTICIPATION FOR THE UNEXPIRED
PERIOD OF THEIR FPPT AND EXTENSION PLUS THREE YEARS OR
TEN YEARS LESS THE NUMBER OF YEARS SINCE AWARD OF THE FIRM'S
FIRST SIGNIFICANT SECTION 8(a) CONTRACT WHICH WAS LIKELY
TO HAVE ASSISTED THE FIRM IN BECOMING COMPETITIVELY VIABLE

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LESS THE NUMBER OF YEARS SINCE AWARD OF THE FIRM'S FIRST
SIGNIFICANT SECTION 8(a) CONTRACT WHICH WAS LIKELY TO HAVE
ASSISTED THE FIRM IN BECOMING COMPETITIVELY VIABLE

Firm Should Participate In The Section 8(a) Program For Ten Years

Section 202 of S. 1993, the "Minority Business Development
Program Reform Act of 1987", provides for an eight year period of
participation in the Section 8(a) program.

This provision should be changed to provide for a ten (10)
year participation period from the date of first award of a
Section 8(a) contract. A preponderance of the testimony before
the House Small Business Committee during consideration of H.R.
1807 supported a ten year fixed participation period. Eight
years is simply not enough time to achieve the level of business
development necessary for minority small firms to succeed in the
competitive marketplace. Many distinguished persons realize the
fallacy of an eight year period, including former Congressman and
Chairman of the House Small Business Committee Parren Mitchell,
who testified before the Senate Small Business Committee in support
of an increased period of participation in the Section 8(a) program.

Moreover, the Senate's own survey (Survey of the Graduates of the Small Business Administration Section 8(a) Minority Small Business Development Program, Report of the Committee on Small Business, United States Senate, May 12, 1987) supports a program of 10 years duration as the minimum length necessary for a firm to achieve competitiveness. The survey also indicates that up to 30% of firms fail following graduation, many because of insufficient time to develop within the Section 8(a) program. Similarly, the Casey Report (Report of the SBA Task Force on Venture and Equity Capital for Small Business, January 1977) indicates that an increased period of participation is necessary because it takes up to 20 years for a small business to become competitively viable. A minimum of 10 to 14 years is not unusual for a high-technology small businesses.

Participation in the Section 8(a) program should not be grudgingly parcelled out. The program is a developmental program, with all of the connotations which go with the concept of "development". The greatest hinderance to development is inadequate time in which to achieve that development. If the goal of achieving self-sufficiency and competitive viability is to be achieved, firms must be allowed a ten year participation period. During that ten year period, firms would remain subject to the self-graduating mechanisms of SBA's existing size standards, and the "program completion" provisions of SBA regulations. Accordingly, once a firm has achieved some measure of competitive viability in an industrial classification by outgrowing the size standard for that SIC Code it would no longer be eligible for work in that

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area under the Section 8(a) program. Similarly, if a firm has substantially accomplished the goals set forth in its business plan and has achieved some level of competitiveness, as determined by SBA, it could be exited from the program. 13 C.F.R. § 124.110(k).

Minority small businesses should be encouraged to grow and develop in every way possible. A ten year participation period from date of first award will help accomplish that goal.

Current Participants And Recent Program Graduates Should Be Afforded A Reasonable Transition Period

Section 202 provides that firms currently in the Section 8(a) program may continue in the program for the greater of eight years less the number of years since award of their first Section 8(a) contract or the unexpired portion of their FPPT, whichever is greater.

Accordingly, the concept of transition is already firmly entrenched in S. 1993. However, that concept must be altered slightly to ensure that the purpose of successfully transitioning current Section 8(a) program participants and recent graduates is realized. This can be accomplished by amending Section 202 to provide that firms in the Section 8(a) program as of January 1, 1987 can self-designate participation for either the unexpired term of their FPPT and extension plus three years, or 10 years less the number of years since award of the firm's first significant Section 8(a) contract, whichever is longer.

This alternative transition period recognizes that firms recently graduated from the program are experiencing a 30% failure rate, due in large part to lack of time in the program. (See,

Senate Survey). It also recognizes that in the late 1970's and early 1980's, procuring agencies were disinclined to fully utilize the Section 8(a) program, and participating Section 8(a) firms received little meaningful program/contract support. Specifically, contract awards were small and generally not immediately followed by additional real support.

These firms should be provided with an opportunity to benefit from the reforms which S. 1993 will bring the Section 8(a) program. This includes the opportunity to formally compete for 8(a) requirements. As with the ten year participation period, a reasonable transition period should not be grudgingly parcelled out. The self-graduating size standards and SBA regulations providing for early exit from the program will serve to "graduate" firms that have achieved a certain level of competition.

The proposed transition period recognizes these factors and ensures that program participants and recent graduates receive the same opportunities for full development as those firms newly entering the program with a ten year period of participation. It will also help ensure that more of these firms do not fail to succeed after graduation as a result of too little time in the program to develop.

The enactment of a ten year participation period and an adequate transition period for current participants and recent graduates will ensure that these developmental goals of the Section 8(a) program are fully realized.

PROPOSED AMENDMENT OF SECTION 202 OF S. 1993Length of Participation Term

Page 7, strike out line 3 through 8 and insert in lieu thereof the following:

"(ii) Notwithstanding any other provision of law, a small business concern certified as a Program Participant shall not be eligible to participate in the Program for a period in excess of 10 years, commencing on the date of the award of its first significant contract under the authority of section 8(a)

Effect on Present Program Participants

Pages 8 to 9, strike out line 15 on page 8 to line 3 on page 9 and insert in lieu thereof the following:

"(F)(i) Any small business concern participating in the Program authorized under this section and eligible for award of contracts under the authority of section 8(a) on or after January 1, 1987 shall be deemed to be a Program Participant.

"(ii) Such Program Participant may continue in the Program for a period of time which is the greater of --

"(I) 10 years less the number of years since the award of such Program Participant's first significant contract under section 8(a), or

"(II) the unexpired portion of its Program Participant Term established in accordance with section 7(j)(10) of the Act plus three years.

* New material underlined.



National Academy of Public Administration

MANAGEMENT REVIEW:
ORGANIZATION AND OPERATION
OF THE
MINORITY SMALL BUSINESS AND
CAPITAL OWNERSHIP
DEVELOPMENT PROGRAM

A Report
for the Small Business
Administration

National Academy of Public Administration

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MANAGEMENT REVIEW:
ORGANIZATION AND OPERATION
OF THE
MINORITY SMALL BUSINESS AND
CAPITAL OWNERSHIP DEVELOPMENT PROGRAM

A Report for the
Small Business Administration
(Under Contract No. SBA-2084-ADAMA-87,
Dated July 24, 1987)

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

November 1987

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PREFACE

The Minority Small Business and Capital Ownership Development Programs are important components of the U.S. government's efforts to provide assistance to socially and economically disadvantaged individuals who own small businesses. The National Academy of Public Administration is pleased to have the opportunity to assess the internal management and operation of these programs.

The assessment was conducted by a Study Team which periodically met with an Academy Advisory Panel to review its progress and discuss findings and recommendations. The Advisory Panel was drawn from the Academy membership and from among other experts in government procurement and small business contracting. The report reflects the Panel's input and was endorsed by all its members.

This document includes the Study Team Report and, in the Foreword, the Advisory Panel comments on that Report. In the Foreword, the Advisory Panel highlights the primary areas in need of improvement. The Panel commends the Small Business Administrator on his continuing efforts to improve the operations of the 8(a) and 7(j) Programs, and urges him to act on the recommendations contained herein.

Ray Kline
President

FOREWORD

The National Academy of Public Administration's Advisory Panel is pleased to assist the Small Business Administration (SBA) in reviewing the organization and operation of the Minority Small Business and Capital Ownership Development Program (MSB/COD). The Panel endorses the findings and recommendations prepared by the NAPA Study Team and set forth in this report. The Panel also wants to identify those matters in the report which it believes warrant emphasis and higher priority, and stress the need for SBA to focus on its business development role as it deals with 8(a) firms.

Long History of Slow Progress

We are struck by the long delay in acting on the many improvements and reforms which have been identified over the past twenty years. There is an impressive body of findings which underscores this observation, as documented briefly in Appendix B and Part II of the report.

Inadequate Share of Resources

We believe that the MSB/COD Program receives a disproportionately small share of SBA's resources in relation to its complexity and the public desire for timely performance, high professional competence and unquestioned integrity.

Need for Enhanced Workforce Effectiveness

Inadequate emphasis on workforce effectiveness is the biggest single deterrent to MSB/COD's productivity. This means not only enough resources to cope with the workloads, but also much higher standards of knowledge and performance by the key personnel at all levels. This, in turn, is a continuous, long term need, and it must not be allowed to vacillate with changes in top management at SBA.

Need for Effective Coordination with Other Programs

This program impacts -- and is impacted by -- virtually every program area for which SBA is responsible. Yet the degree of effective interface and coordination appears quite uneven. This emphasizes the importance of making the support of the MSB/COD mission a matter of continuing concern to all SBA officials. This, of course, must be a matter of high priority to the Administrator and his key staff.

Need for Management Data Which Is Current, Accurate and Complete

Officials at every level, both in the Central Office and in the field, stressed to us the importance of a readily accessible information system to depict trends and comparative data on workloads, backlogs, processing times, portfolio mixes, and progress of certified firms -- both while active in the portfolio and after completion for a period of several years. Such insights are essential to sound planning and to the analysis of the true costs and benefits of the MSB/COD Program.

Need for Strong, Top-to-Bottom Leadership

Finally, the Panel wants to emphasize its conclusion that strong leadership -- over both policy and operations -- is essential, from the level of the Administrator to the personnel on the front line who are delivering MSB/COD services to eligible firms. Today's dispersal of responsibility to over sixty locations with highly varying patterns of coordination, staffing and leadership, is at the heart of many of the problems which have been experienced and which continue to adversely affect this program.

The National Academy of Public Administration's Panel commends SBA for its efforts to achieve a more effective MSB/COD Program.

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LIST OF ABBREVIATIONS

AA	Associate Administrator
ACE	Active Corps of Executives
ADD	Assistant District Director
ARA	Assistant Regional Administrator
BDE	Basic Development Expense
BOS	Business Opportunity Specialist
CICR	Computerized Internal Control Review
DD	District Director
DOD	Department of Defense
8(a)	The section of the Small Business Act authorizing sole source contracts for socially and economically disadvantaged firms
GSA	General Services Administration
IG	Inspector General
MBDA	Minority Business Development Agency (of the Department of Commerce)
MBDC	Minority Business Development Center
MESBIC	Minority Enterprise Small Business Investment Company
MIS	Management Information System
MSB/COD	Minority Small Business/Capital Ownership Development
NASA	National Aeronautics and Space Administration
OFPP	Office of Federal Procurement Policy
OPA	Office of Procurement Assistance
PASS	Procurement Automated Source Selection
PCR	Procurement Center Representative
RA	Regional Administrator
SADBU	Small and Disadvantaged Business Utilization (describes both the Offices and their Directors)
SBA	Small Business Administration
SBDC	Small Business Development Center
SBI	Small Business Institute
SBIC	Small Business Investment Company
SCORE	Service Corps of Retired Executives
7(j)	The section of the Small Business Act authorizing management and technical assistance activities
SOP	Standard Operating Procedures

EXECUTIVE SUMMARY

In its review of the organization, operation and staffing of the Minority Small Business and Capital Ownership Development Program (MSB/COD), the National Academy of Public Administration (NAPA) Study Team found it a challenge to suggest strategies and priorities from among the many good ideas being discussed both in and outside of the Small Business Administration.

The principal objective of Sections 7(j) and 8(a) of the SBA statute is to provide assistance to socially and economically disadvantaged individuals who own small businesses, and thus promote their viability in the competitive market place.

Emphasizing SBA's Role in Business Development

The NAPA Study Team believes that better portfolio management is a key to emphasizing SBA's role in business development, rather than just assisting 8(a) firms in acquiring contracts. The Study Team thus recommends that SBA:

- 1) Analyze at least annually all Portfolio Managers' assignments and the condition of their portfolios.
- 2) Establish five-year goals for portfolio development in each District.
- 3) Establish National and Regional "Coordinators of Marketing" to oversee national buying contract support and plan more systematically for future 8(a) portfolios. The Study Team believes that a nationally coordinated effort would permit Business Opportunity Specialists (BOSs) to devote more time to their business development roles.

Creating Synergy Among SBA Programs

The 8(a) Program is not well enough integrated with the rest of SBA and the federal buying agencies. The Study Team recommends that SBA:

- 4) Form a "Council of SADBU's" (Small and Disadvantaged Business Utilization Offices/Directors) at the National level to encourage effective Agency support of the MSB/COD Program and to increase contract support throughout buying activities.
- 5) Inaugurate a collaborative relationship between the SBA Associate Administrators for MSB/COD and Procurement Assistance, and their field associates, the Procurement Center Representatives (PCRs). The Study Team noted that when the PCRs' attitude toward 8(a) is negative this carries over to buying agencies. SBA needs to present a cohesive image to the federal agencies as it implements the Office of Procurement Assistance programs in which MSB shares goals, set-asides and subcontracting.
- 6) Encourage Regional Administrators to hold "Partnership Workshops" with Associate Regional Administrators and District Directors to foster optimum meshing of services in support of the MSB/COD Program.

Enhancing Workforce Effectiveness

SBA needs well qualified staff, distributed throughout the organization so that they can provide the best service to small businesses and federal agencies. While the MSB staff is highly dedicated, it is clear that some BOSs do not have adequate skills to counsel 8(a) firms. Many lack college training or direct experience in the business community in the very areas in which they are to provide assistance — management, marketing, financial analysis and planning, procurement and technical matters. SBA is developing a Career Development Training Program for BOSs, but it does not appear to be adequate.

The NAPA Study Team thus recommends that SBA:

- 7) Appoint a full-time "Director of Workforce Effectiveness" to oversee training and career development for entry-level and senior, front-line staff.
- 8) Broaden the MSB Procurement Career Program to the "Procurement and Business Opportunity Specialist Career Program". The systematic approach for procurement area training suggests that the same expertise can make an

immediate contribution to the broad needs of MSB, including the procurement segment already in place. The Board which administers this training program could set certification standards for BOS/Contract Specialists, define staff training needs (relating them to client needs) and suggest potential training sources.

The Small Business Administration has a wealth of sound experience among its staff, and can do more to share it throughout the organization. The Study Team encourages more cross-fertilization through workshops and other appropriate mechanisms. To better do this, the Study Team recommends that SBA:

- 9) Continuously assess client needs as a basis for designing 7(j) awards and sharing experiences among MSB Business Opportunity Specialists.

Functional Management Approach Can Work

As an organization with 10 regions and 66 field offices, SBA has a decentralized management structure. This makes strong national leadership and continuous communication important, and means SBA needs to ensure a climate for sound management accountability.

The Small Business Administration needs good communication and information systems so it can determine whether units are meeting their objectives and doing so efficiently. The Study Team recommends that SBA:

- 10) Assure that the Associate Administrator for MSB/COD has a strong voice in appointing counterpart staff at the Regional and District levels. If necessary the Administrator himself should be brought into the decision. The Administrator must assure selection of candidates who are highly qualified.

The 8(a) Program needs accurate data on participants and graduates. The existing data base is not sufficiently current and complete for field use, and MSB does not have a manager devoted to systems design and use. The Study Team thus recommends that SBA:

- 11) Appoint a full-time Director of Management Information Systems and Budget to develop the MSB systems design and to coordinate systems improvements now in process. The person should also design and implement the budget planning and execution system.

Testing Ideas for Change

A key aspect of sound management is adaptability. Changing SBA's 400-page Standard Operating Procedure is a time-consuming process, and probably must stay that way to permit the Agency to weigh the impacts of change on clients, contracts and District Offices. The Agency needs a process to permit it to "test" ideas for change and provide a procedure to promptly implement those judged to produce more effective results. The Study Team thus recommends that SBA:

- 12) Encourage selective testing of imaginative ideas, under the direction of the Deputy Associate Administrators for Policy and for Operations. Some of the ideas would also enhance MSB/COD client services, while others would enhance accountability within the organization. Among the "test candidates" the Study Team would highlight are ideas to: expedite the client eligibility process; reduce the backlog of applications; evaluate the MSB role as prime contractor and introduce competition into the Business Development Program.

An important aspect of accountability is management review of ongoing activities. The Study Team believes that, in addition to SBA's excellent Computerized Internal Control Review (CICR) program, its Inspector General should more methodically examine MSB/COD programs to help the Associate Administrator for MSB/COD identify areas of vulnerability needing immediate attention. Currently, the Inspector General has such a limited number of staff that this is not practical. The Study Team suggests that enhanced Inspector General resources could be targeted directly to improving MSB/COD Program controls.

Professionalizing MSB/COD Image and Operations

The public is not aware of the many successes of the MSB/COD activities or the importance of the roles played by SBA, the Department of Commerce and the

numerous federal buying agencies. Unfortunately, when the 8(a) program gets media attention, it is to highlight the occasional examples of fraud, abuse or waste.

The Small Business Administration can do more to let the public know of its successful activities. The Study Team thus recommends that SBA:

- 13) Seek public understanding through highly professional publications and exhibits of the MSB/COD Program and its achievements. This report offers several specific ideas.

The politicization of individual SBA decisions is far more difficult to address, but it is very real. In response to a recent questionnaire, 74 percent of the District Directors answered "yes" to the question: "Is the MSB/COD Program overly influenced by political considerations?"

The Study Team believes that SBA can best address this by professionalizing its own activities. When management systems are sound, staff are well trained, and 8(a) firm selection criteria evenly applied, SBA is in a stronger position to deter interference from outsiders. The place to start is with staff training. The Study Team wishes to again stress that when Business Opportunity Specialists are themselves more fully trained in business skills they will be better able to counsel clients and interact with federal buying agencies. This enhanced level of professionalism will be reflected in the MSB/COD Program results.

To further professionalize staff, and help them cope with the barrage of letters and phone calls they sometimes encounter from highly placed officials, it would be useful to provide additional emphasis on the SBA Code of Conduct and general professional ethics. The Study Team thus recommends that SBA:

- 14) Stress the orientation of all personnel in the Code of Conduct (SOP 37-35) and in rigorously observing ethical standards. These items could be added to the Career Development Program for BOSs.

To permit SBA to do the research and planning necessary to assess its activities and plan for change, the NAPA Study Team recommends that SBA:

- 15) Consider using a portion of the 7(j) funds to sponsor and support a dedicated "Management Research Institute" with a long term charter.

Looking to the Future

The Study Team firmly believes that SBA is willing to improve its MSB/COD Program and is taking steps toward so doing. It offers these recommendations to SBA as part of its blueprint for action in making the 7(j) and 8(a) programs fully effective mechanisms for assisting socially and economically disadvantaged small businesses.

INTRODUCTION

Small Business Administration (SBA) Contract SBA-2084-ADAMA-87 was signed with the National Academy of Public Administration (NAPA) on July 24, 1987.

Its purpose was to complete by November 30, 1987 a "Management Review of the Organization and Operation of the Minority Small Business and Capital Ownership Development Program" (MSB/COD) as outlined in a proposal submitted by NAPA to SBA on July 17, 1987 (see Appendix A herein).

The plan for the study as originally envisioned called for four steps spanning a period of four months. It was envisioned that the first half of the period would be spent in intensive interviewing to learn the current organization and operations, followed by selected case studies of key problems and a report writing stage.

The first phase was completed on October 2, 1987 and resulted in a progress report submitted to the Associate Deputy Administrator for Management and Administration. The factfinding had proceeded more rapidly than originally envisioned due to the exceptional cooperation of SBA officials contacted. As a result Mr. Moffitt, the Deputy Associate Administrator, directed that the progress report be amplified into a final report to be finished by early November. This document is in response to that instruction.

How Factfinding Was Conducted

SBA stressed to the Academy at the outset that this review should concentrate on internal management and operation -- not on the program policies. Our interviews were limited to government officials and contacts with associations concerned with the program, as required by the scope of the review. SBA thought it would be impractical to broaden the study to include the firms participating in the program, although an excellent Senate study of 177 graduates was available to us.

We began our review by examining the reports on MSB/COD which have accumulated since 1969. Altogether some 15 reports by the General Accounting Office (GAO), the Inspector General and others have been produced in this period, most

in the 1970s and early 1980s. A particularly interesting in-house task force worked on these issues in 1977. A brief overview of these useful background documents is presented in Appendix B.

In addition to past studies, SBA provided a library of reference materials to us, including the Regulations and Standard Operating Procedures (a highly detailed 400-page manual). These were of continuing importance for reference.

The principal effort, however, consisted of individual interviews with over 100 officials, listed in Appendix C. Most important were officials at the SBA Central Office, the key buying agency specialists in the MSB program, and SBA officials in six regions (II, III, IV, V, VI and IX). The findings from these in-depth consultations are summarized in Part II of this report.

Finally, we contacted officials of selected associations whose members have contacts with the MSB program, either as users of 8(a) firms or as participants in the program.

The NAPA study was reviewed by a Panel chaired by NAPA's President, Mr. Ray Kline. The members are named in Appendix D.

Plan of This Report

This report consists of seven brief chapters designed for reading by the SBA management team:

- Part I is an overview of the MSB/COD Program today.
- Part II is a distillation of the candid views of officials presented in over 100 interviews.
- Part III outlines NAPA's key conclusions regarding program strengths and concerns and the goals deserving highest priority for future improvements.

- Parts IV through VII outline a set of specific recommendations for immediate action by the administrator and his associates, both at Central Office and in the widely deployed field organization.

Part I

OVERVIEW OF THE MANAGEMENT AND
OPERATION OF THE MSB/COD PROGRAM TODAY

History of the MSB/COD Program

The Minority Small Business and Capital Ownership Development Program (MSB/COD) of the SBA has its roots in the Small Business Act of the 1950s which gave SBA authority to contract with other federal agencies and to subcontract this work to small businesses. The recent report of the Senate Small Business Committee* provides a concise summary of the past 20 years of evolution which is highlighted as follows:

- The contracting authority in Section 8(a) of the Act was first used by President Johnson to direct contracts to businesses located in distressed urban communities in order to create jobs.
- In 1969, SBA redesigned the program to give federal contract support to firms owned by socially or economically disadvantaged persons, and by the end of the next decade some 2,000 firms were admitted to the program.
- Concerned about publicized abuses, Congress enacted Public Law 95-507 in 1978, creating the position of Associate Administrator for Minority Small Business and Capital Ownership Development to administer Sections 7(j) and 8(a) of the Act. The purposes of Sections 7(j) and 8(a) are to:
 - o "Foster business ownership by individuals who are both socially and economically disadvantaged;

* Senate Print 100-29, 100th Congress, 1st Session, May 12, 1987.

- o "Promote the competitive viability of such firms by providing such available contract, financial, technical and management assistance as may be necessary;
 - o "Clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials and construction work from small business concerns owned by socially and economically disadvantaged individuals." (CFR 124.1)
- Section 211 of the new Act also created a subcontracting program to encourage major prime contractors to provide subcontracting opportunities for small and disadvantaged businesses.
 - Finally, in October 1980 Congress enacted PL 96-481 requiring SBA to negotiate with each firm in the 8(a) portfolio and each new firm entering the program a fixed period of time in which to participate in the program.

An excellent detailed history of these actions is provided in Appendix E in articles written by Dr. John Magnotti, a member of the NAPA Panel, and published in the National Contract Management Association Contract Management magazine in April-May 1985.

In the remainder of this chapter we will discuss:

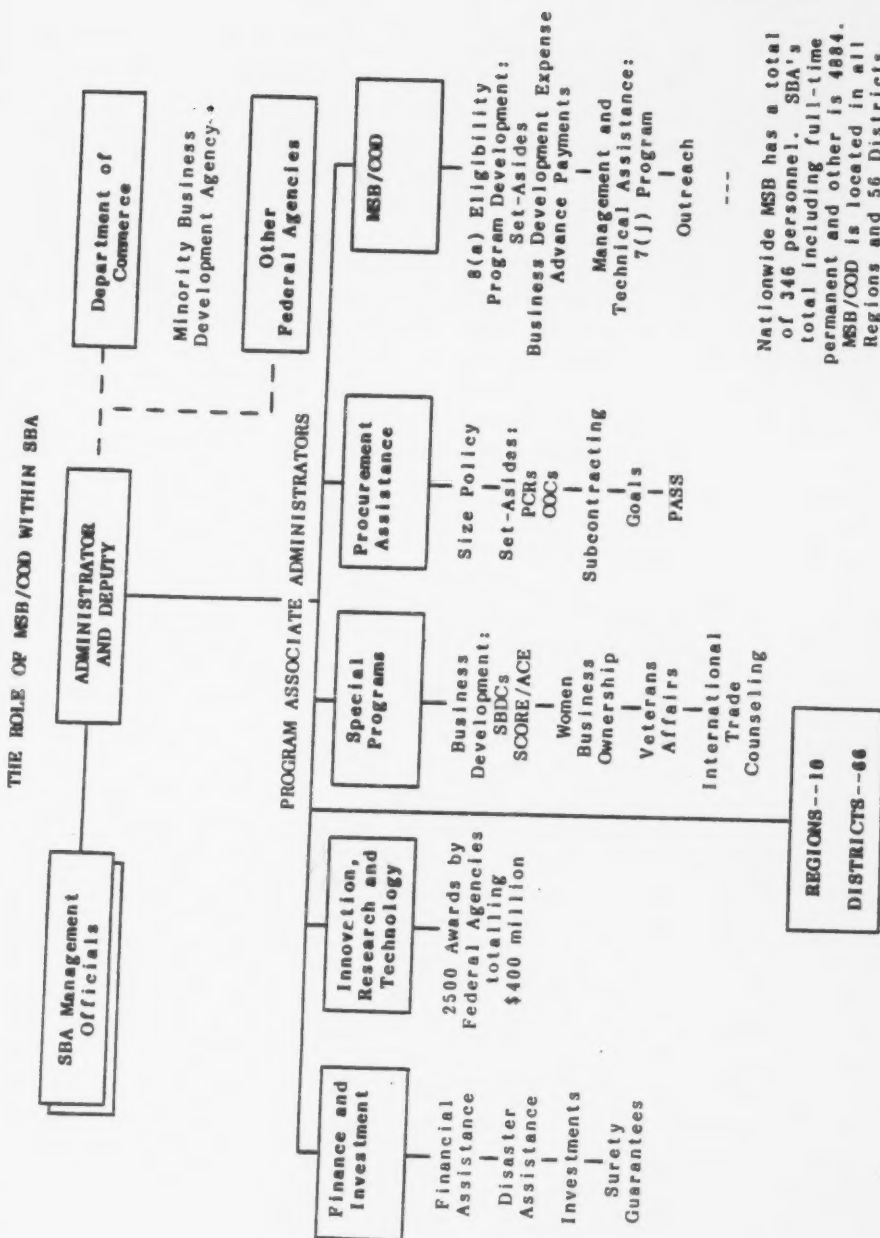
- Where the MSB/COD program fits into the SBA organization
- The principal tools utilized by MSB/COD to do its job, and their size
- The authority of the associate administrator for MSB/COD
- The basic procedures employed by MSB/COD

Where Does the MSB/COD Program Fit Into the SBA Organization?

The official chart of the Small Business Administration appears under Appendix F, but this diagram fails to put the MSB/COD program in full perspective. We have thus sketched the diagram appearing as Exhibit 1 to display the MSB/COD role as follows:

- SBA's MSB/COD program is by statute one of five clusters which comprise the SBA's network of programs.
- MSB/COD as an organization is one of the smallest in terms of personnel. At Central Office it has 36 personnel out of an overall staff numbering 1,478. In the field, MSB has a staff of 310 out of the total of 3,406.
- However, we were repeatedly told by officials, in Central Office and in the field, that while MSB is small in staff size it often places a major demand on the time of the Regional Administrators and District Directors — up to half of their time in cases such as Washington, D.C.
- The reasons for this phenomenon are the high visibility of the MSB program, with its mission to assist the socially and economically disadvantaged firms to become competitively viable. Not only does this involve 8(a) sole source contracts and 7(j) management and technical assistance activities, for which MSB is solely responsible, but in some measure it requires coordination with many other SBA programs which are open to the small business community including the MSB portfolio.

Exhibit 1



-- Specifically:

- o The Office of Finance and Investment has programs for loans, surety guarantees and SBA support of the Small Business Investment Corporations (one group of which is licensed by SBA solely to help small businesses owned by socially or economically disadvantaged persons as authorized by statute). Many SBICs provide management assistance to the companies they finance.
- o The "Special Programs" group is potentially of high importance to the MSB portfolio. The Small Business Development Centers (SBDCs) provide a network of 500 private sector lead centers and subcenters to offer managerial and technical help, research and other types of specialized assistance to small businesses, with a budget in fiscal year 1986 of \$35 million. In addition, there are Small Business Institutes on university and college campuses. The Business Development Program offers free counseling, courses and workshops with the support of the Service Corps of Retired Executives (SCORE) and the Active Corps of Executives (ACE). In some field activities visited these were termed powerful sources of assistance.
- o The SBA Procurement Assistance Program has long been an active means of identifying and setting aside procurements for small businesses. In fiscal year 1986 it had a goal of \$61 billion and involved 46 agencies. The 8(a) program, discussed later, is a specialized type of set-aside for the MSB Program. The Office of Procurement Assistance also manages the statutorily mandated Subcontract Program required of Federal Prime Contractors on contracts over \$500,000. It coordinates the process of setting annual goals by federal agencies, and goals include small disadvantaged businesses, both 8(a) and non-8(a).

A specialized and high potential tool is the Procurement

Automated Source Selection system (PASS), which is a directory of small suppliers of goods and services containing, at present, about 150,000 companies, including 26,000 minority-owned.

In addition to this impressive list are the programs outside of SBA's organization with which it must continuously interface. One of long standing is the Department of Commerce Minority Business Development Agency (MBDA) with a staff of 240 personnel and a budget for grants to about 100 Centers totalling \$24 million annually. The close working relationship SBA desires with this program (which assists large and small minority owned enterprises) has recently been spelled out in a Memorandum of Agreement included here as Appendix G. Further, the President's fiscal year 1989 budget, now before the Congress, requests appropriation authority to transfer the MBDA to the SBA to effect a full consolidation of these programs.

Another very significant development for SBA is PL 99-661. It established a three-year Department of Defense (DOD) program through which DOD would reserve five percent of its total contract dollars in awards to small businesses controlled by socially and economically disadvantaged individuals, plus historically black colleges and universities and minority institutions. In implementing this legislation, DOD has established a new set-aside program for competition among eligible firms to include 8(a) firms. The Act also requires DOD to render "technical assistance" to eligible participants; this will be provided in part by a group of "Procurement Technical Assistance Centers" supplementing SBA's SBDCs. Their budget in fiscal year 1988 is projected at \$7 million.

Finally, all federal agencies are required by law to establish an Office of Small and Disadvantaged Business Utilization (SADBU), whose Director shall report to the head of the agency.

Outside of the federal sector itself, state and local governments, Chambers of Commerce, and economic development councils are active in promoting SBA-type programs in their own communities and seek the active

participation of local SBA officials — particularly the District Directors and their staff specialists, including the Assistant District Directors for MSB/COD.

What Are the Tools of the MSB/COD Program?

As suggested by the above review, there are numerous tools for supporting small minority-owned disadvantaged firms, most of those cited being also available to all small businesses.

The specific tools uniquely assigned by statute to the Associate Administrator for MSB/COD are those set forth in Sections 8(a) and 7(j) of the Small Business Act.* In practice, we found that these direct tools comprise a "process" which under today's statutes presumably extends over a period of no more than seven years (although legislation is now being considered in the House Committee which would extend that period to nine years).

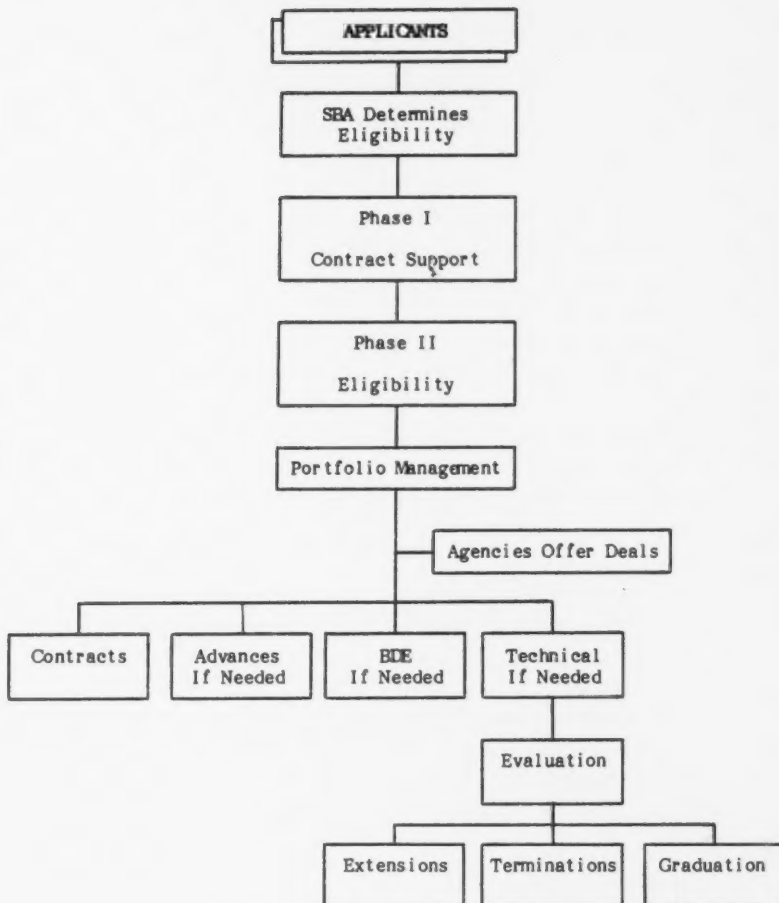
The simplest way to present this process is to follow briefly a flow chart of events depicted in Exhibit 2:

- A firm desiring to receive the SBA's full assistance under the MSB program does so by applying for acceptance into the program. This application for certification is a highly rigorous and time-consuming process. Today there are 3,000 firms that hold such certification and 2,000 that have applications in process. The time span may require a period as long as one year, according to a recent study of 53 cases published by the AA-MSB/COD office.

* SBA has issued succinctly-done fact sheets on these two programs. Copies are provided in Appendix H.

Exhibit 2

SMALL BUSINESS ADMINISTRATION
THE MSB PROCESS
(Presumably Over a 7-Year Period)



- To be eligible, applicants must be at least 51 percent owned, controlled and operated daily by one or more socially and economically disadvantaged persons. The firm is also expected to have existed for two years, although exceptions are permitted.

Social disadvantage applies to those who have been subjected to racial or ethnic prejudice or cultural bias because of their identification as members of certain groups. Economic disadvantage applies to those whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities.

SBA's criteria for making these complex determinations are laid out in its highly detailed Standard Operating Procedures (SOPs). Such determinations are made in depth at the District Office concerned, then by the Regional Office, and finally by the Central Office. The statute requires the Associate Administrator to take final action to approve or decline an application.

- As Exhibit 2 indicates, there is a Phase I step in processing applications during which SBA determines whether there is a reasonable prospect of contract support being available.

Where the prospective contracts are for "local buys" this determination is done by the District. For contracts involving "national buys" this determination is made at the Central Office, adding two to three weeks to the process.

- If the contract support outlook is affirmative, the full application process, Phase II, proceeds through the District, Region and Central Offices. This involves determinations of: (1) social disadvantage, (2) economic disadvantage, (3) ownership, (4) control, (5) daily management, (6) size, (7) character and (8) prospects for success. The applicant must prepare a Business Plan forecasting sales by year, both 8(a) and non-8(a) for the period of the Fixed Participation Term, by Standard Industrial

Code(s).

- Accepted firms are then given individual assistance in developing their marketing plan to approach federal agencies and do "self-marketing." Under Section 8(a), SBA is authorized to become the prime contractor for a federal buy and to choose the 8(a) firm it wishes to become the subcontractor on a sole-source basis. This is the heart of the 8(a) contracting opportunity. In practice, an agency will frequently recommend the 8(a) firm it desires to perform the work, and with SBA's approval proceed to negotiate the deal for SBA's signature. SBA subsequently delegates full contract administration to the buying agency.

To put the above process into further perspective, there are today 3,000 active certified 8(a) firms. In fiscal year 1986, there were 4,200 contract awards valued at \$3.1 billion under 8(a) procedures. Today only about half of the certified firms receive sole source awards in a given year. Of the present total portfolio, 70 percent have received one or more awards during their participation. Some may wait several years for their first opportunity.

SBA staff specialists, known as Business Opportunity Specialists (BOSs), are presumably constantly working on ways to assist their 8(a) clients. Typically, each BOS has a group of firms assigned as permanent "clients". The "search" for contract opportunities may involve letters, calls or personal visits. The BOS concurrently encourages the 8(a) firm to seek opportunities in the commercial market and looks for other ways to assist the firm to develop. Three special tools need emphasis at this point:

- Advance payments. On occasion, a firm will need cash flow to buy materials or pay other expenses in advance of collecting payments for goods or services delivered. SBA is authorized to approve such payments by Treasury under very elaborate procedures. Unfortunately, there have been failures to repay, as when a company goes bankrupt. This is a current problem requiring attention. One estimate furnished to the Study Team

suggests that the amount of "delinquent" advance payments which may require write-off approximates \$24 million. We found these payments increasingly avoided by SBA personnel. They are in effect interest-free loans.

- Business Development Expense. A special annual appropriation of \$17 million has been made available to MSB to cover the cost of buying capital equipment required to perform specific contracts. In earlier years this fund was also available to pay for a premium price differential when a new 8(a) firm could not reduce its costs to the agency's "fair market cost" estimate. We found no evidence of this usage today and remarkably little use of the fund for capital equipment. In those instances where it is so used (again, under rigorous controls) the payment becomes a grant since no repayment is required if the contract is completed. In the fiscal year 1988 budget proposal, OMB requested Congress to drop this funding.
- The 7(j) Fund. Very important to the work of the Business Opportunity Specialists in the field is the 7(j) Fund of \$10 million annually, which is used to initiate, organize and maintain management counseling services for small disadvantaged firms. Today some 100 awards are made, after nationwide solicitation, against which task orders are issued to procure consulting services for firms deemed in need of this service by the BOS concerned. An additional group of about 50 awards is made to organizations that submit unsolicited proposals to perform innovative projects in support of the MSB Program. Regional Panels review and recommend awards in their regions, but final awards are made by the Office of Procurement and Grants Management at Central Office.

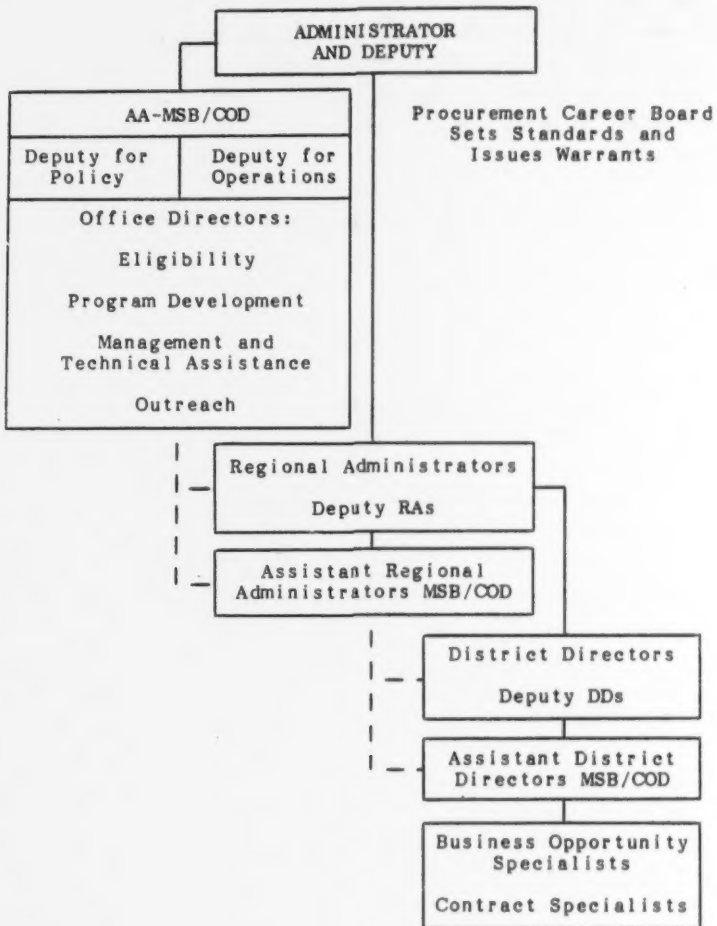
The final section of Exhibit 2 is labeled "evaluation". It describes the continuing process of review by the BOS, with a definite requirement for an extensive annual review and report on the status of the 8(a) firm. Further, each participant today is allowed to make application to have the fixed

term extended to a maximum of seven years. This is an onerous and time-consuming process under current procedures. During the annual reviews, if a firm has ceased to meet the eligibility criteria for any of 25 reasons, SBA may initiate termination action. This again is a highly detailed process which requires handling by the General Counsel, and if the client desires, an Administrative Law Judge hearing. Otherwise, when firms reach their final participation date it is the goal of the BOS -- starting up to two years in advance -- to work with the firm on a "transition" plan which will help assure competitive viability. The new Memorandum of Agreement with the Department of Commerce envisions that MBDA will work jointly with SBA in planning these transitions and will provide marketing assistance in non-8(a) markets.

How Is Authority of the MSB/COD Program Assigned Today?

Exhibit 3 depicts the flow of authority and responsibility today. The line of command runs from the Administrator to the Regional Administrators, and through them to their staffs and District Directors:

- At Central Office the AA-MSB/COD has a staff of 36 who are primarily engaged in "policy" activities concerned with writing the Standard Operating Procedures, working on revisions to them, and processing those actions that are required to come to Central Office. These include:
 - o Approval or declination of applications
 - o Approval of Business Development Expense (BDE) over \$500,000 or where the amount exceeds 50 percent of the contract amount
 - o Acts on National Buys
 - o Acts on appeals to program terminations and completions
 - o Grants of waiver to SOPs

Exhibit 3**ORGANIZATION OF THE MSB/COD PROGRAM NATIONWIDE**

- o Recommendations that the Administrator intercede when a field activity refuses an 8(a) set-aside deemed important by the Region

One important additional Central Office activity is the Procurement Career Board, which sets standards and issues warrants to contracting officers authorized to sign contracts up to stated amounts.

- At the Regional level the RA reviews all actions going on to the Central Office and exercises final approval over:
 - o Extensions
 - o Fixed participation terms
 - o BDE under the threshold requiring Central Office approval
 - o Advance payments
 - o Contracts within the delegated authority of Regional staff
- At the District level the DD approves all actions going to the Region or above and issues delegations to the buying agencies. The DD approves contracts within the delegated authority of district staff.

The wide and thinly spread field structure needs comment. There are a total of about 61 positions in the 10 MSB Regional Offices. Two of the largest are Boston, where the MSB function for the Region is centralized into a staff of eight positions, and Atlanta, where the MSB staff of 14 provide total centralization of the contracting function.

With regard to the 56 District Offices where MSB Offices are

located, there are six Offices of size:

Washington, D.C. District	35
Newark District	9
New York District	12
Chicago District	9
San Francisco District	9
Los Angeles District	10

The remaining 50 District Offices have an average of 3.5 MSB positions, and half of these offices have only one or two employees.

It must be noted that Central Office responsibility for helping the Regions and Districts improve operations is unclear, and final authority over allocation of funds for travel and positions is left to the Regional Administrators and District Directors.

A full list of responsibilities of the Central, Regional and District Offices is included in Appendix L.

Part II

WIDE INTEREST IN IMPROVING
MSB/COD'S ORGANIZATION AND PROCEDURES

It became apparent to the NAPA Study Team that numerous critiques and improvement proposals are being discussed. Thus, it seemed important to distill the most widely held viewpoints. In fact, NAPA's challenge is how to suggest strategies and priorities from among this wealth of ideas.

Based on our interviews and readings of current reports, we are classifying the viewpoints encountered under eight sources:

- A. Synopsis of Key Issues Identified by Central Office MSB Officials
- B. Views of Other Central Office Officials Presented This Year
- C. Selected Views of Regional and District Officials in Field Activities Visited
- D. Selected Responses of District Directors to Questionnaire on Their Perception of the 8(a) and 7(j) Programs
- E. Ideas Suggested to the NAPA Study Team by Directors of Small and Disadvantaged Business Utilization Offices
- F. Findings of the Senate Small Business Committee After Surveying Graduates of the 8(a) Program
- G. Selected Recommendations from Reports of Presidential Panels
- H. Selected Views Expressed to the NAPA Study Team by Members of Key Associations and Attorneys Who Advise 8(a) Firms

The following pages, designed for easy reading, are devoted to each of these eight groups in the remainder of this chapter. More detail is available to SBA officials in NAPA working papers.

A. Synopsis of Key Issues Identified by Central Office MSB Officials

(Based on Workshop in the Spring of 1987)

<u>Problem</u>	<u>What It Is and Why</u>
1. Contracting Program vs. Business Development Program	More management capability in 8(a) firms needed—key to long-term viability.
2. Lack of Program Evaluation System	Lack of data on program dynamics. Totally inadequate systems for tracking firms that leave the program.
3. Approval Process Too Long	No current data. No system to collect data. 70-day standard in SOP, but generally not followed.
4. Political Influence	"Do It Syndrome"—Special treatment extended to those firms with political contact--A way of life for 8(a) firms.
5. Need for Competition	Non-competitive 8(a) causes more problems than it is worth.
6. Resource Problems	There is a clear need for a higher ratio of 8(a) staff to 8(a) firms for business development.
7. Front Businesses	Non-minority businesses being fronted by minorities.

- | | |
|--------------------------------|---------------------------|
| 8. Unfair Business Development | Small amount given. |
| Expense/Advance Payments | Perception of unfairness. |
| Policy | Scarcity of resources. |

MSB/COD's Operating Priorities for FY 1988

1. Introduce minority young people to the concept of entrepreneurship.
2. Involve minority young people in small business ownership.
3. Involve minority business concerns in the international trade market.
4. Improve communications with federal buying activities, the 8(a) portfolio, the minority business community, the private sector and the general public.
5. Ensure uniformity in applying eligibility criteria.
6. Reduce processing time for program eligibility actions.
7. Increase the number of firms participating in the 8(a) Program, and the number and dollar value of contracts awarded through the program.

Note: Details on the above points are contained in Appendix J.

B. Views of Other Central Office Officials Presented This Year

Excerpts from Administrator Abdnor's "State of the Agency Address" on June 17, 1987 at the Omaha Meeting of District Directors

1. I want all of us from Central Office to the Field Offices to constantly communicate with one another.
2. We agree that certain abuses (of the 8(a) program) have occurred and we wholeheartedly support their elimination.
3. I do want to put special emphasis on two initiatives: One is international trade and the other is rural development.
4. We will interpret the rules and regulations the same way in every District and Branch Office across the country.
5. We will emphasize quality, courtesy and consistency in all our operations. You can be pleasant, courteous and strong--and still be able to say "No".
6. Let CICR be used as a tool in attaining quality and consistency.
7. We have a great story to tell and I am sorry to say we haven't done a good enough job of it.

Nine Objectives Cited by Associate Deputy Administrator Moffitt in His Statement to the Senate Small Business Committee on September 2, 1987

1. A greater emphasis must be placed on genuine business development.
2. Some form of competition must be introduced into 8(a) to better reflect the "real world" of federal procurement.
3. The Agency must attempt to provide a more equitable geographic distribution of national buy contracts.
4. SBA must change its attitude toward MSB/COD staffing. It must not be used as a dumping ground for non-performing employees.
5. Firms capable of performing increasingly sophisticated contracts are becoming a major part of the entire portfolio. This development requires better training of MSB personnel.

6. SBA must also become more active in locating and securing contracts from the various procuring agencies.
7. There must be better coordination between MSB personnel and SBA's Procurement Division. SBA must be more active in introducing 8(a) firms to contracting opportunities with the major government prime contractors.
8. Processing time for program entry must be reduced.
9. The benefits of the MSB/COD Program must be extended to more minority firms in the United States.

**C. Selected Views of Regional and
District Officials in Field Activities Visited**

(Regions II, III, IV, V, VI and IX)

Each Region we visited has distinctive characteristics in terms of size, organization and composition of portfolio. Appendix K is devoted to these six Regions. This outline highlights those views which seemed most strongly held and around which SBA should seek consensus:

1. Central Office leadership is essential.
2. More attention to marketing is important to assure future sound development of the portfolios suited to each Region and District.
3. Business development training tailored to MSB needs is urgently needed to supplement procurement courses.
4. More balanced staffing in relation to workload should be sought. It now differs among offices by more than two to one.
5. The problems of the Washington, D.C. District Office reflect the program's image nationally.
6. The value of BDE and advance payments is a subject of widespread debate. Delinquencies are a source of concern.
7. The 7(j) arrangements need to be tailored to the needs of each Region. Manufacturing poses special problems.
8. The budget process is antiquated.
9. The interface with the Office of Finance and Investment, Office of Procurement Assistance, Office of Business Development, Small Business Development Center, Minority Business Development Center,

and Minority Enterprise Small Business Investment Corporations appears to vary widely. The need for more cooperation by Procurement Center Representatives (PCRs) stationed at major installations is especially important. Some large installations are reported to be noncooperative.

10. More Central Office attention to national buys is urged to minimize the need for individual Regions to criss-cross the United States.
11. The adoption of simplistic staffing ratios (such as number of firms per BOS) is questionable due to differing practices in work assignments. Region I is fully centralized. Region IV centralizes the contracting function. Washington, D.C. has specialized units for processing, contracting and business development. Newark and Detroit specialize BOS assignments by business class. Los Angeles expects its front line professionals to handle the total workload including application processing, contracting and business development.

**D. Selected Responses of District Directors to
Questionnaire on Their Perception of the 8(a) and 7(j) Programs**

(Conducted by the AA-MSB/COD in June 1987. 74 Responses.)

<u>Selected Questions</u>	<u>% Yes</u>	<u>% No or Other Response</u>
Are MSB employees adequately trained to carry out their mission?	42.6	57.4
Is the MSB/COD Program overly influenced by political considerations?	74.0	26.0
Is MSB/COD Program assistance delivered fairly to clients?	38.7	61.3
Does MSB/COD staff adequately address 7(j) program matters?	71.2	28.8
Does more time need to be dedicated to the 7(j) Program?	62.7	37.3
Should competition be part of the development program?	86.3	13.7
Although MSB is responsible for developing the total MSB community, does it dedicate the bulk of its efforts to certified 8(a) firms?	71.2	28.8
Is the staffing level adequate?		
Greatly Understaffed	31.8	
Slightly Understaffed	45.5	
Staffing Adequate	22.7	

Is SOP effective?

Adequate	55.3
Inadequate	15.8
Too Restrictive	13.2
Too Liberal	10.5
Other	5.3

How much time is spent on MSB/COD?

More than on other programs	30.0
Less than on other programs	30.0
Same as on other programs	40.0

**E. Ideas Suggested to NAPA by Directors of
Small and Disadvantaged Business Utilization Offices**

(Total of 12 Agency Interviews Conducted)

Small and Disadvantaged Business Utilization Offices (SABDUs) are established by statute and are required to report to the head of the agency. They oversee a range of programs of which the MSB Program is only one part. At the Department of Labor, for example, this official oversees eight programs: (1) small business; (2) socially and economically disadvantaged business (8(a)); (3) minority business other than 8(a); (4) labor surplus area set-asides; (5) women-owned business; (6) subcontracting; (7) historically black colleges and universities; and (8) minority banking.

The SABDUs have wide-ranging responsibilities for oversight, training, goal setting, reporting and liaison with SBA and others.

Priorities Urged by the 12 SABDUs Visited

While there was no unanimity, there was a strong majority favoring the following reforms:

1. There should be more continuity of leadership in SBA with respect to the programs enumerated above, and more outreach to the federal agencies.
2. SBA should have more interest in helping resolve problems which impair agency performance in these programs. Three of the agencies had formal Memoranda of Understanding proposed for consideration by the SBA Administrator and their agency head. Particularly impressive was the agenda of ten recommendations prepared by the Department of Agriculture.
3. More expertise in SBA is required in: (a) the nature of the businesses in the 8(a) portfolio; (b) how to develop the portfolio to work more

effectively with the federal buying agencies; and (c) how to help these firms become competitively viable.

4. SBA should delegate more contracting authority to the buying agencies and perhaps withdraw (with statutory revision) from the prime contractor role, while retaining its full business development role in respect to the 8(a) firms. Small purchase delegation is emphasized.
5. The overlap between the Department of Commerce Minority Business Development Agency and the SBA should be eliminated. Merger is favored.
6. The five percent contract award goal imposed on DOD in PL 99-661 should be watched with care since it might become a government-wide model.

**F. Findings of the Senate Small Business
Committee After Surveying Graduates of the 8(a) Program**

(Published May 1987. 177 Graduates Surveyed.)

Page 39 of the Committee Report, S. Print 100-29, states the following:

"The SBA Section 8(a) program is an important vehicle for ensuring the inclusion of minority firms in our nation's federal procurement system . . . and some progress has been made in administering the program since enactment of Public Law 96-481.

"However, the Committee is gravely concerned that the lack of progress towards making 8(a) a true business development experience for participants, as intended by law, as well as other major deficiencies in the overall operation of the program seem to overshadow its basic intent and effectiveness.

"The areas of greatest concern are:

- (a) the Agency's apparent inability to deliver timely management and technical assistance to program participants although the Capital Ownership Division of SBA was established for that purpose;
- (b) the failure of SBA or MBDA to vigorously implement the Inter-agency Agreement so as to provide graduating firms transition from a sole source set-aside program to the competitive marketplace;
- (c) the broad perception by many respondents that although SBA personnel are helpful, many are unable to provide the technical assistance or guidance needed in most procurement matters;
- (d) certain administrative weaknesses that undermine the smooth operation of any program of this magnitude. A glaring example is the Agency's difficulty in keeping accurate or updated files on program

graduates and participants

"On the other hand, the Committee understands that there are extenuating circumstances over which SBA may have little or no control that hamper the success of the program. Several such situations were also cited by survey respondents and are of concern to the Committee, such as: (a) SBA's lack of authority to select procurement opportunities from major federal agencies in order to capture a steady stream of contracts for portfolio firms, which would clearly add more predictability to structuring and administering the program; (b) Section 211 of Public Law 95-507, which requires prime contractors to establish subcontracting goals for minority small businesses, has failed to significantly bolster contracting opportunities for program participants as well as graduates; and (c) staff reductions sustained by the Agency of approximately 35% since 1979, with an increase in the portfolio of nearly 40 percent since that time."

G. Selected Recommendations from Reports of Presidential Panels

Recommendations of the White House Conference on Small Business, 1986

Recommendation 52 dealt with the MSB/COD Program and carried 413 votes:

1. The 8(a) Program should be maintained under the SBA rather than being transferred to the Department of Commerce.
2. The application procedures should be streamlined by eliminating unnecessary duplication at the district, regional and national levels.
3. Subcontracting with small businesses should be promoted by creating positive incentives that reward prime contractors for effectively utilizing small and disadvantaged firms.
4. The SBA should sponsor and promote programs within the private sector that assist small and disadvantaged firms in learning competitive skills and in developing private sector markets.
5. The SBA and the Office of Federal Procurement Policy (OFPP) should provide sensitivity training and technical training for Federal program and contracting personnel to assure that they understand the goals and objectives of the Small Business Set-Aside and 8(a) Programs, and the enormous value these programs bring to federal procurement and the American economy.
6. In preparation for graduation from the 8(a) Program, the SBA should establish a transition process for small and disadvantaged businesses that rewards excellence, high performance and growth, rather than severely penalizing it.

Recommendations of the President's Advisory
Committee on Small and Minority Business Ownership, September 1986

This report urged action to expand participation by assuring availability of 8(a) certification to all minority firms that meet certain new minimum criteria. Three proposals for legislative enactment were offered:

1. A centralized 8(a) authority to establish new criteria, a timetable for approval/disapproval, and a reasonable and effective term for participation in the Program.
2. A data-keeping function within the authority to record 8(a) activity and performance achieved so as to report periodically to the Administration and the Congress.
3. Authorization for government departments and agencies to negotiate directly with 8(a) contractors, using their Small and Disadvantaged Business Utilization Offices, instead of the present practice of the SBA being the intermediary in the entire procurement cycle.

H. Selected Views Expressed to NAPA by Members of Key Associations and Individual Attorneys Who Advise 8(a) Firms

1. The program did not seem well understood by some of the association representatives we met. This suggests the need for better communication.
2. MSB/COD staffing is considered too lean and inexperienced, especially in the Washington, D.C. District Office.
3. There are many success stories, but they lack visibility to the public at large.
4. The eligibility process is far too long.
5. There is too much politics in the program.
6. SBA needs to exercise more oversight of the buying agencies.
7. SBA must give far more attention to firms in the portfolio. One suggestion is to use "graduates" to help accomplish this.
8. More competition needs to be injected into the program.
9. It is feared the new DOD five-percent-goal program will increase prices.
10. More attention needs to be given to audits of 8(a) firms to detect problems before they get out of hand.

Associations included:

American Society of Consulting Engineers
 National Federation of 8(a) Companies
 TRIAD (National Security Industrial Association, Electronics Industries Association, Aerospace Industries Association)

Part III

OVERALL CONCLUSIONS REGARDING KEY
STRENGTHS, KEY CONCERNS AND PRIORITIES FOR IMPROVEMENTS

As we neared the conclusion of our factfinding, we were impressed with the numerous strengths in the MSB/COD organization and its operations. It would be an error to leave the reader with the assumption that the program is entirely problem-ridden, since that is not true. In fact, every Region visited had success stories of which they were very proud, but about which the public is seldom informed. Among the significant strengths noted during our study are the following:

1. The record of successes which need to be much more systematically documented in the future. Illustrations of the Regional Winners of the "8(a) Graduate of the Year Award" in each Region for 1987 are shown in Appendix L.
2. The wide and candid recognition of the opportunities for improvement -- from the Administrator's office to the MSB field staff in 66 locations -- is a sign of dedication and courage in confronting the MSB problems. The summary presented in Part II of this report bears out this finding.
3. The current realignment of the MSB Central Office, which was approved on August 19, 1987 is a positive move to act on the opportunities for improvement identified by MSB's Central Office leadership. A new "Deputy AA for Operations" has been appointed, and the appointee is highly respected within SBA for her management skills. In addition, a newly appointed Director of Management and Technical Assistance possesses sound analytical skills demonstrated in previous SBA assignments. A Deputy to the Director of Eligibility has also been appointed. She, too, brings unusual program knowledge and operating experience. These revisions appear to be well-conceived and skillfully executed.

4. The Standard Operating Procedures (SOP 80 05) issued on April 27, 1987 are a monumental achievement of 400 pages hammered out over a seven-year period. We found the field staff proud of this accomplishment and anxious to preserve and enhance it.
5. The rigorous Procurement Career Development Program and the warranting of Contracting Officers is in accordance with the best professional practices in the federal government. Again we found wide appreciation for the program and its management.
6. The Computerized Internal Control Review (CICR) program, which is applied SBA-wide, is respected as a tool to verify compliance with regulations. It has also been used by the ARAs for MSB/COD in the Regions to assist them in conducting on-site assessments of program performance in the District Offices. This benefit must not be lost in the future.
7. Perhaps most important for this report to the Administrator is our finding regarding the caliber of the career executive staffs at the Regional and District levels (Deputy RAs, ARAs, District Directors, Deputy DDs, ADDs, Supervisory BOSs). Out of 43 interviewed in depth we rated 85 percent "knowledgable" or "outstanding". Hence there is a strong career executive cadre with high continuity.
8. Finally, the dedication to the MSB mission is remarkably strong among those who are performing its functions in the Central Office and the field. It is, in fact, an exciting program whose participants recognize that it is making a significant contribution to our national economy.

Key Concerns Expressed by Various Officials

The top executive team with whom we met both at Central Office and in the field is proud of the strengths noted above. But they hasten to note the

facets of MSB management which need constant attention to avoid a degradation of these strengths. These are factors which the NAPA Study Team kept continuously in view as it formulated its recommendations:

1. Factors which continue to depress morale:
 - The effort to dismantle SBA in the recent past
 - Adverse publicity of the type now in the press
 - Congressional concerns
2. The susceptibility of the MSB program to "misuse" as viewed by some. This results from the high visibility of actions taken in the eligibility, contracting and business development processes, and the many groups which can speak loudly in their communities as to SBA actions considered adverse to their constituents' interests.
3. The sheer difficulty of avoiding the appearance as well as the fact of favoritism. This is heightened by the wide geographic distribution of the portfolio and the differences in types of federal contracts available by geographic area. Manufacturing contracts, for example, average over three times the dollar value of construction contracts. Repeat awards occur for some of the more successful firms. But the sheer fact that the top 100 contractors received half of the dollars awarded last year heightens the appearance of favoritism. Further, half the portfolio firms received no contracts.
4. The possibility of a leveling off or drop in the size of the portfolio. The portfolio has enjoyed an exceptional period of growth since 1981 -- from about 1,800 to 3,000 participants. It is now reaching the end of the fixed terms not to exceed seven years (from date of first contract) resulting from the 1980 legislation (PL 96-481). Further, the Defense budget which is so

significant to the contract support for 8(a) awards may be peaking. This leads some to a concern about the near term outlook. Others are concerned that the new DOD competitive Set-Aside Program for all small disadvantaged businesses (not just 8(a)s) might reduce existing opportunities for sole source 8(a) awards. (PL 99-661)

5. The lack of uniformly favorable support for the 8(a) program among the buying agencies is a continuing source of concern to MSB leaders in the Regions and Districts visited — and especially in Regions II, V and IX.
6. There is a feeling among some MSB officials that a closer working partnership with other SBA programs is possible and desirable. Most frequently cited is the attitude of the Procurement Center Representatives (PCRs) in some locations.
7. Finally, the unsurprising willingness of members of Congress and others in high political positions to take an interest on behalf of their constituents is a source of continuing concern, especially when unfavorable press attention develops.

Priorities for Improvements in MSB Organization and Operations

The most frequently cited issue which it is said must be resolved before basic management improvements are implemented is: "Are we a contracting program or a business development program?"

It seems to us that this issue has been clearly settled by recent pronouncements of top authorities.

The Study Team considered the objectives presented by Associate Deputy Administrator Moffitt in his September 2, 1987 testimony before the Senate Small Business Committee to be candid and well thought out. His first objective — "A greater emphasis must be placed on genuine business development" — is one the Study Team particularly endorses.

The Senate Small Business Committee report dated May 1987 stated that "the Committee is gravely concerned that the lack of progress towards making 8(a) a true business development experience for participants, as intended by law, as well as other major deficiencies in the overall operation of the program seem to overshadow its intent and effectiveness." (Emphasis supplied.)

The mission statement contained in 13 CFR 124.1 defines the purpose of the program as follows: "To promote the competitive viability of such firms by providing such available contract, financial, technical and management assistance as may be necessary."

It seems to us that the issue of whether MSB/COD is (1) primarily a contracting program, or (2) a business development program in the broadest sense, is clearly answered by these authoritative statements. We are thus framing our recommendations on the assumption that it is the intention to fully implement the business development mission.

In the remaining parts of this report we outline a series of recommendations aimed at achieving three major objectives:

1. Institute a comprehensive Portfolio Management Program to ensure a healthy portfolio of firms that will be given effective assistance.
2. Launch a creative program to enhance workforce effectiveness, thus improving the ability of the SBA workforce to render the wide range of management and technical assistance services required.
3. Ensure accountability for MSB/COD performance at each level of management: Central Office, Regional Office and District Office.

Part IV

INSTITUTE A COMPREHENSIVE PORTFOLIO MANAGEMENT PROGRAM

**Importance of Continuing and Comprehensive Analysis of the Portfolio
Assigned to Each Business Opportunity Specialist**

The challenge of how to assess the MSB/COD workload and assure its proper distribution among the front-line professional staff in the District and Regional Offices is a very complex one.

It appears, based on gross comparisons among the Regions, that wide disparities exist in staffing relative to the number of firms in the Regional portfolio, as shown below:

	Region	Number of 8(a) Firms (March 1987)	Number of MSB Employees (July 1987)	Ratio of Firms to Employee
I	Boston	109	8	14 : 1
II	New York	288	40	7 : 1
III	Philadelphia	729	64	11 : 1
IV	Atlanta	341	26	13 : 1
V	Chicago	304	36	8 : 1
VI	Dallas	365	49	7 : 1
VII	Kansas City	114	18	6 : 1
VIII	Denver	143	15	9 : 1
IX	San Francisco	411	37	11 : 1
X	Seattle	<u>160</u>	<u>17</u>	<u>9 : 1</u>
	TOTAL/AVERAGE	2,964	310	10 : 1

As one begins to dig beneath these surface measures, one finds that a large number of variables have an immediate impact on efficiency of staffing and adequacy of service to clients. To mention but a few:

- 1) The number of locations serviced by each Region. One or more full-time personnel are stationed at 66 locations:

Region	Number of MSB Locations
I	1
II	6
III	7
IV	9
V	8
VI	11
VII	5
VIII	5
IX	8
X	<u>6</u>
TOTAL	66

The most heavily loaded District appears to be Birmingham, Alabama, with 48 8(a) firms for one BOS. The most lightly loaded District appears to be Lubbock, Texas, with six firms and two employees.

Such variations have, in turn, other explanations. For example, the Atlanta Region, in which Birmingham is assigned, has centralized the contracting function in the Regional Office for all Districts. (Other variations by District Office are portrayed in Appendix K.)

- 2) Still another gross measure is the number of 8(a) contracts awarded in each region relative to the number of 8(a) firms. This is an additional workload for which Regional staffing must be adequate. Again the variations are wide:

Region	Number of Contracts in 1986	Estimated Contracts per Employee	Estimated Contracts per 8(a) Firm
I	188	24	1.7
II	318	8	1.1
III	1,200	19	1.6
IV	398	15	1.2
V	404	11	1.3
VI	462	9	1.3
VII	123	7	1.1
VIII	294	20	2.1
IX	570	15	1.4
X	<u>247</u>	<u>15</u>	<u>1.5</u>
TOTAL/AVERAGE	4,204	14	1.4

But numbers of contracts are but a partial measure. The average value per contract in FY 1986 was as follows:

Region	Average Amount of Contract (Rounded)
I	\$500,000
II	820,000
III	740,000
IV	780,000
V	870,000
VI	770,000
VII	740,000
VIII	635,000
IX	750,000
X	<u>528,000</u>
AVERAGE	\$737,000

- 3) Another gross measure we found especially useful in comparing Regions is the "portfolio mix" as shown in Exhibit 4.

Distribution of Firms in the Portfolio by Business Class and Region

Region	Number of Firms					Percent of Firms						
	A	B	C	D	E	Total	A	B	C	D	E	Total
I	15	30	20	44	--	109	13.7	27.5	18.3	40.5	--	100.0%
II	74	72	60	77	5	288	25.7	25.0	20.8	26.7	1.8	100.0%
III	57	156	117	387	12	729	7.8	21.3	16.0	53.3	1.6	100.0%
IV	63	129	64	85	--	341	18.4	38.0	18.7	24.9	--	100.0%
V	72	108	48	72	4	304	23.6	35.8	15.7	23.6	1.3	100.0%
VI	62	157	59	86	1	365	16.9	43.3	16.1	23.5	0.2	100.0%
VII	11	49	25	28	1	114	9.6	43.2	21.9	24.5	0.8	100.0%
VIII	8	68	26	36	5	143	5.5	47.9	18.1	25.1	3.4	100.0%
IX	77	134	70	129	1	411	18.7	32.8	17.0	31.3	0.2	100.0%
X	12	92	28	25	3	160	7.5	57.6	17.5	15.6	1.8	100.0%
Total	451	995	517	969	32	2964	15.2%	33.5%	17.4%	32.7%	1.2%	100.0%

Key

A Manufacturing

B Construction

C Non-Professional Services

D Professional Services

E Concessions

Source

The above data were drawn from a portfolio analysis provided to NAPA and marked "As of 3/87".

Regions tend to have a preponderant business class, as shown by the data in Exhibit 4 and Appendix K:

- Construction is the most populous class overall. These are local buys and tend to be contracts of lower unit value:

Business Class	Number of Contracts in 1986	Value per Contract (Rounded)
Manufacturing	464	\$1,490,000
Construction	1,592	403,000
Non-Professional Services	713	770,000
Professional Services	<u>1,435</u>	<u>850,000</u>
TOTAL/AVERAGE	4,204	\$737,000

- Manufacturing is the smallest business class in numbers of firms, but enjoys high value per contract. These are national buys and difficult to market.
- The Non-Professional Services class is small nationally in number of firms, although rather evenly spread percentage-wise. Again, these are local buys but of higher unit value than Construction.
- Professional Services has the second largest number of firms nationally but this business class generated \$1.2 billion of contracts in 1986. It is difficult for the Regions to market due to its national buy nature and the dominance of the Washington, D.C. portfolio.

Gross Workload Data Are Useful for Market Analysis, But Lack the Precision Required for Improving Program Management at the District Level

During our visits to the Regions and Districts we were in several cases given the opportunity to sit with a BOS and discuss each firm in that BOS's current portfolio. This proved to be far more informative than the study of gross numbers. A summary of findings from four such interviews is recapitulated below without identifying the District or BOS concerned. Our goal is to communicate the importance of this type of portfolio analysis as a basis for achieving optimum assistance to the clients and greater productivity by the BOS personnel.

The following four examples are actual BOS portfolios:

District Office A

26 cases of all business classes. The range of firms being served includes construction, CPA, sheet-metal fabrication, dry cleaning, electrical contractor, pharmaceutical equipment, landscape planning, and management consulting.

5 are graduating soon, with the outlook good for 2.

12 are developing, but need considerable help in marketing.

9 are failing or have failed, and should probably be eliminated.

The principal client need was in management. The BOS states his days are spent on crisis situations, but he enjoys his counseling responsibilities in managing the portfolio he inherited.

District Office B

23 cases of all business classes, plus heavy involvement in processing applications and contracts.

13 are proceeding satisfactorily but need marketing help.

6 require intensive help in marketing, finance and management.

4 are failing and should be eliminated.

This BOS has an obvious overload. His primary background had been in procurement.

District Office C

16 cases, all in the construction field.

14 cases are succeeding.

2 cases are a "challenge".

This BOS had spent 28 years running his own business prior to joining SBA. He related with pride how he is able to render personalized help to his firms in cost estimating, reducing overhead costs, helping obtain a line of credit at the bank, pricing services, marketing, organization and staffing. He obviously has a manageable workload and high skills as a business development counselor.

District Office D

18 cases, all in the manufacturing field.

2 are progressing well.

11 are new to the program and are learning how to deal with the federal government.

3 have been in the program several years but have no contract yet.

2 are failing.

This BOS spends considerable time traveling to installations in several Regions to market his portfolio. He stressed the special needs of the manufacturing portfolio and the need to obtain specialized assistance to help him train his firms in quality control practices. He expressed a strong hope that SBA can foster better relationships with major buying activities.

Recommendations for Increasing the Productivity of Portfolio Managers

The above case studies plus the findings summarized in Parts II and III lead to the following five recommendations. They are aimed at sharply increasing the productivity of Portfolio Managers (whatever their title may be) in each District Office.

Recommendation 1: Analyze all Portfolio Managers' assignments and the condition of their portfolio at least once each year to enhance their effectiveness and productivity. Utilize peer reviews.

While the range of field professional staff duties vary widely, a high percent spend at least part of their time on business development duties. Those who have their own portfolios are required under the SOP to prepare an annual in-depth assessment of each assigned firm's status and progress. This rigorous discipline should be continued, spread around the year as at present.

However, at least once each year each Portfolio Manager should be visited by a team of peers from another District or Regional Office to perform the kind of assessment illustrated in the NAPA case studies. Over time, all field professional staff might serve on such review teams.

The objectives of these reviews would be to perform a constructive overall

assessment of each Portfolio Manager's workload, in each District Office, to:

- Identify opportunities to obtain a better mix of 8(a) cases for each Portfolio Manager. In larger offices the benefits of specialization by business class appear highly desirable.
- Where practical, suggest the separation of application processing and contract negotiation duties, since this is likely to improve the productivity of all these functions as well as business development.
- Clean out the deadwood. Firms which have gone out of business or which show no promise should be systematically identified, whether termination occurs or not. We obtained various estimates, but it appears that 10-15% of some portfolios fall into this category. To inflate portfolio size by including inactive cases leads to erroneous conclusions regarding workloads.
- Through peer review, "knowledge sharing" ideas can be exchanged as to how to assist clients. This could also be a rich resource of case studies of the type discussed in Part V.
- Develop criteria for planning future portfolio marketing efforts so as to seek clients most likely to benefit from BOS skills and Federal contract opportunities available.

The NAPA Study Team suggests that the formation and scheduling of the Peer Review Teams be a responsibility of each ARA, and that over time a significant portion of the professional workforce at GS-11 and GS-12 be engaged for a few days at a time in this effort.

At the Central Office Level, the Director, Office of Eligibility, and the Deputy should coordinate the effort.

The work of these teams should result in brief memoranda of findings and

recommendations for the use of the ADD and staff. Summaries of benefits or problems arising from the reviews should be furnished to the ARA and the Central Office for use in preparing training materials and revising the SOPs.

Recommendation 2: Establish five-year goals for portfolio development in each District based on these and related analyses.

Using this systematic peer advice and their own analyses, each Assistant Director should plan portfolio development goals for the next five years based on:

- lessons learned from the peer review
- the firms anticipated to graduate or leave the MSB Program and their outlook for survival
- ways to achieve optimum productivity for each BOS
- anticipated trends in the type and volume of contract support likely to be available in a District, drawing on buying agency forecasts and advice from the Procurement Center Representatives.
- likely trends in MSB staffing

These plans, prepared annually, should be furnished to the ARAs and the Central Office to help them develop long-range budget proposals and marketing objectives. This in turn will enable the Administrator to better inform the President, the Cabinet and the Congress regarding such opportunities.

The remaining recommendations in this Part are aimed at actions which will foster achievement of such five-year plans.

Recommendation 3: Form a "Council of SADBUs" at the national level to encourage effective agency support of the MSB/COD Program and to increase contract support throughout buying activities.

The cooperation of the buying agencies is essential to the health of the portfolio, even though the goal is to avoid making new firms over-dependent on government contracts. The purpose of this Council should be put on the President's Cabinet Agenda for brief coverage by the Administrator of SBA.

We found a very uneven picture of cooperation in our Regional visits and even within Regions. We also found that the agency SADBUs would welcome a creative leadership role by the AA-MSB/COD and his staff. To that end it is urged that the following be done:

- First, the new Deputy AA for Operations should call on a number of the senior SADBUs, one-on-one, to discuss her new role and ascertain the attitude of the SADBUs toward forming a Council chaired by the AA-MSB/COD. Among the first agencies contacted, due to their lead roles in federal procurement, would be DOD, GSA, NASA and OFPP. Commerce's MBDA should also be invited to participate from the outset.
- Second, a "kick-off" session of the new Council should be held at a retreat near Washington to attract strong attendance and encourage appearances by the Administrator of SBA, the Administrator of CSA, and the Administrator of OFPP, congressional principals and selected industry officials.

After the national effort is launched, appropriate local efforts should be initiated. The NAPA Study Team noted, in Philadelphia, that the District Director chairs such a group, sponsored by the Federal Executive Board, which includes industry attendees.

Early attention should be given to full discussion of the new DOD Set-Aside Program (PL 99-661) and how to capture its benefits and lessons for the civilian agencies.

Responsibility within the AA-MSB/COD for the Council should be assigned to the Deputy for Operations, with full support from the Deputy for Policy, the Office Directors, and especially from the Director of Program Development.

Recommendation 4: Inaugurate a collaborative relationship between the AA-MSB/COD and the AA for Procurement Assistance, and their field associates.

The Office of Procurement Assistance (OPA) is one of SBA's most widely known and highly respected components, with a long history of professionalism.

Today this staff has approximately 250 personnel in the field, with a sizable portion of them located at buying activities, to conduct the Small Business Set-Aside and Breakout Programs.

The total size of the set-aside goals for fiscal year 1986 was \$61 billion, and 46 agencies participated in the negotiations with SBA.

The 8(a) Program was once administered by the OPA. No one is suggesting that this merger be reinstituted, nor would that be consistent with the intentions of Congress in PL 95-507. On the other hand, the need for close understanding of each other's objectives and operating plans seems essential — and certainly OPA should seek to support its sister program on a national basis. This is reported to be less than satisfactory in some instances today. Unfortunately, a negative attitude toward the 8(a) Program by the Procurement Center Representatives encourages a similar attitude on the part of the buying agencies.

SBA should have one face to the federal agencies in implementing the OPA programs in which MSB shares goals, set-asides and subcontracting. To this

end the NAPA Study Team urges that the Administrator of SBA meet periodically with the two AAs and discuss with them the most effective relationships. The AA-OPA should be a regular attendee at meetings of the SADBUC Council, and should encourage similar participation by her ARAs for Procurement Assistance. Joint meetings of PCRs and BOSs should be planned on a Regional basis in the near future, to invite free and open discussion of problems which have been experienced. District Directors should be involved in these discussions to enlist their interest in better communications between the MSB staffs in the District Offices and the OPA staffs that function directly out of the Regional Offices.

At Central Office this again appears to be an area of primary importance to the Deputy AA for Operations, with the support of the Director of Program Development.

Recommendation 5: Establish National and Regional "Coordinators of Marketing" to oversee national buying contract support and plan more systematically for future 8(a) portfolios.

Closely related to forming better communication links with the agencies in Washington through a Council of SADBUs -- and to improving collaboration between OPA and the MSB/COD -- is the need to fix clear responsibility in the MSB structure for the National Buying Programs and their oversight. Today the responsibility is left almost entirely to the District Offices. This is far too dispersed a responsibility. The New York Deputy RA, in a report prepared in March 1987, stated the following views:

"SBA's marketing system could be improved. The system currently calls for a strong field effort at the District level, and goaling and clearance roles at Central and Regional levels. This system is inefficient in that we have BOSs crisscrossing the country seeking support for 8(a) firms at a great cost in time and money. If Central Office could mount a sustained effort at the National level, we think that it would produce more cohesive and effective results. While BOSs would not be relieved of their marketing responsibility, they would be able to devote much more time to their business development roles."

To implement this farsighted idea, the NAPA Study Team recommends that there be designated a "Coordinator of Marketing" on the staff of the AA-MSB/COD at Central Office and under each ARA in the Regions.

This position should provide a person fully accountable for coordinating an SBA outreach effort designed to keep the portfolio at the level of coverage believed sound and achievable by MSB leaders.

Recommendation 6: Encourage Regional Administrators to hold "Partnership Workshops" with the ARAs and District Directors to foster optimum meshing of services.

In addition to needing a more effective relationship between the PCRs and MSB's Business Opportunity Specialists, a similar opportunity exists in varying degrees with the other functional executives -- Legal, Finance and Investment, Business Development, and Administration.

The Regional Personnel Officer will be indispensable in launching the workforce effectiveness program proposed in Chapter V. The Budget Officer plays a critical role in assuring the appropriate levels of funding; Business Development oversees the vast network of SBDCs, SBIs, SCORE and ACE; Finance and Investment can offer assistance to 8(a) clients in respect to loans and relationships to SBICs. In some Districts we were impressed with the interchange of staff specialists in such functions as review of MSB applications, analysis of business plans and assessment of applications for BDE. The Regional Counsel plays a critical review and advisory role in every program. The RA is the key spokesperson to state, local and industrial organizations.

The Central Office "Director of Outreach" is responsible for encouraging greater partnership arrangements. We recognize that this is a difficult mission due to the vast array of organizations and their differences. We were impressed with the excellent workshop arranged and chaired by this Director (Mr. Conrad) at the recent MedWeek celebration. This workshop brought 8(a) graduates, prime contractors who utilize 8(a) firms, and

Central Office MSB officials together to exchange experiences and communicate with an audience of prospective 8(a) firms. It is a model of an event which might well prove beneficial in every Regional city, plus selected District cities.

Review of Recommendations to Institute a Comprehensive Portfolio Management Program

Recommendation 1: Analyze all Portfolio Managers' assignments and the condition of their portfolio at least once each year to enhance their effectiveness and productivity. Utilize peer reviews.

Recommendation 2: Establish five-year goals for portfolio development in each District based on these and related analyses.

Recommendation 3: Form a "Council of SADBUs" at the National level to encourage effective Agency support of the MSB/COD Program and to increase contract support throughout buying activities.

Recommendation 4: Inaugurate a collaborative relationship between the AA-MSB/COD and the AA for Procurement Assistance, and their field associates.

Recommendation 5: Establish National and Regional "Coordinators of Marketing" to oversee national buying contract support and plan more systematically for future 8(a) portfolios.

Recommendation 6: Encourage Regional Administrators to hold "Partnership Workshops" with the ARAs and District Directors to foster optimum meshing of services.

Part V

**LAUNCH A CREATIVE PROGRAM
TO ENHANCE WORKFORCE EFFECTIVENESS**

The MSB field personnel have complex, varied duties which require a range of skills. The NAPA Study Team believes current staff skills need to be assessed and upgraded.

MSB/COD expects its front-line Contract Specialists and Business Opportunity Specialists to be able to serve as chief counselors to a portfolio of 15 to 30 or more firms during their formative years, and to guide them to competitive viability.

-- The Duties of the Contract Specialist
(Pages 18-19 of the SOP)

- o Analyze prices and negotiate contracts for a variety of commodities and services
- o Instruct the 8(a) firm about preparing its proposal
- o Analyze all proposals to determine if they conform to the needs of the procuring agency
- o Review and recommend advance payments and business development expense, and administer such arrangements when approved.

This range of duties would be considered difficult among senior procurement professionals in the federal and private sectors. Often, however, they are combined with those of the BOS as well.

-- The Duties of the Business Opportunity Specialist
(Pages 19-20 of the SOP)

Assist in the strengthening and growth of manufacturing, construction and service enterprises owned and operated by disadvantaged individuals, through direct counseling and assistance in:

- o Management
- o Marketing
- o Financial analysis and planning
- o Procurement
- o Technical matters

Frequently the staff lack college training or direct experience in the business community in performing the tasks. Yet, they are expected to be skilled teachers and counselors, expert in their subject matter, and knowledgeable of other sources to which they can refer their 8(a) clients.

Illustrations of the Need for Workforce Effectiveness Analyses

To make more concrete the unrealistic workloads which are imposed on MSB/COD front-line field personnel, we made test checks in three Regions.

- In the Washington, D.C. District Office we found a portfolio of 483 firms—larger than that of any Region in the nation—plus a large backlog of applicants and prospective applicants. We examined the personnel files of 22 top incumbents of the MSB/COD and found that:
 - o Four supervisors had considerable education beyond high school, some with private sector experience.

- o Only one of the 18 front-line specialists had a college degree. Formal training in government courses was chiefly in procurement. While this is valuable, it is only one of the five skills mentioned in the SOP. Further, several of those who had advanced to these difficult assignments had come through the clerical or secretarial ranks. We were told that the Washington, D.C. employment market puts SBA at a disadvantage in recruiting the needed Business Development skills.
- In two Regions of similar size (portfolios of 350-400) we asked the ARA-MSB/COD to rate for us his personnel at GS-11 and above, on a confidential basis. The results were startling:

Region With 19 Staff at GS-11 and Above

Skills Rated	Number "Good" or "Strong"	Number "Needing Development" or "Weak"
Procurement	13	6
Other Business	4	15

Region With 23 Staff at GS-11 and Above

Skills Rated	Number "Good" or "Strong"	Number "Needing Development" or "Weak"
Procurement	13	10
Financial	5	18
Other Business	5	18

The better showing on procurement skills is a reflection of the effectiveness of the Procurement Career Program and the rigorous warranting process, which is regarded as an honor as well as a delegation of

authority. Further, SBA takes advantage of the procurement training courses developed by DOD, GSA and others to meet high professional standards.

Our interviews in six Regions and 13 District Offices lead to the following three recommendations, building on those offered in Part IV:

Recommendation 7: Appoint a full-time "Director of Workforce Effectiveness" to oversee training and career development for entry-level and front-line staff.

We were delighted to find that SBA has begun to develop a Career Development Training Program for Business Opportunity Specialists, especially at the entry level. The first product of this effort, shown in Appendix M, outlines selected courses for BOSs at GS-5 through GS-12.

Unfortunately, however, we found no plans to follow through on this beginning. Furthermore, we believe that the approach is only one small part of the total objective, which should be to make rapid progress now -- starting with the senior, front-line staff who are in daily contact with the 8(a) firms needing counseling and advice. This effort should then become a permanent, long-term project applying creative techniques. A suggested agenda for action is as follows:

- Under the leadership of the Deputy AA-MSB/COD for Operations, appoint a GS-15 Director of Workforce Effectiveness who has exceptional understanding of the MSB Program and its mission as a full-fledged Business Development Program, and is well qualified to serve as a resource and leader in workforce development.
- Inventory the business development skill levels of each MSB employee at the District Office level, in Grades 9, 11 and 12. Identify District-by-District the strengths and weaknesses. This will define specifically what needs to be done to upgrade employee effectiveness by District Office and by subject.

- Meet with the RA, the Director of Personnel, the ARA-MSB and the ADDs for the Region and lay out a comprehensive "Skills Upgrading Program" for the coming 12 months. Invite to this planning session handpicked 8(a) graduates and other uniquely qualified persons from the SCORE, 7(j), SBDC and other programs who are willing and qualified to assist.

-- Set a goal of making major progress in bolstering the capability of each District MSB staff within the first year and in issuing "Certificates of Achievement" to each MSB employee who succeeds in showing definite progress. For those who cannot meet a reasonable standard of improvement, make plans for their replacement, with very constructive policies governing reassignments or assistance in finding other employment.

The goal of this suggested agenda is to launch an intensive effort to overcome the most glaring skill weaknesses in the first year. Thereafter, each employee who receives a Certificate of Achievement will be given an improvement goal for each succeeding year. Each Region should be directed to designate a focal point "Coordinator of Workforce Effectiveness" to assure accomplishment of an agenda such as the above, and to have continuing responsibility for setting annual "Individual Development Plans" for employees who succeed in passing the minimum standards of the first year's program.

Beginning in the second year, launch the training program for entry level employees as now planned by the MSB Director of Personnel. (See Appendix M.)

Recommendation 8: Broaden the MSB Procurement Career Program to the "Procurement and Business Opportunity Specialist Career Program," tailored to the MSB/COD occupations and skill requirements.

The systematic approach which this Board has taken in the procurement area for all of SBA suggests that the same expertise can make an

immediate contribution to the broad needs of MSB, including the procurement segment already in place.

Specifically, the expanded Board (or a new Board with relevant membership) should be the forum for:

- Setting certification standards for BOS/Contract Specialist personnel.
- Assisting MSB in defining the training credentials needed and the best sources of courses, in the government and from outside sources. Among the institutions with which the Board might work are:
 - o The General Services Administration and the Office of Personnel Management
 - o The Federal Executive Institute
 - o The Federal Acquisition Institute
 - o The Army Management Engineering Training Agency (Rock Island)
 - o Small Business Development Centers and Universities in Regional Cities and Washington, D.C.
 - o The USDA Graduate School
 - o 7(j) Awardees
 - o Small Business Institutes
 - o The Association of Collegiate Schools of Business (St. Louis)

o The National Association of Schools of Public Affairs and Administration

One suggestion made to us during field visits is the value of developing videotapes, using professional speakers, to prepare segments that can be widely used in the District Offices for training employees and clients in selected subjects.

The new Director of Workforce Effectiveness would, of course, be the lead member of the Career Development Board from MSB -- and the implementer of its proposed standards and training requirements. Other SBA programs with a business development interest should be represented on the Board.

Recommendation 9: Continuously assess client needs as a basis for designing 7(j) Awards and sharing experiences among MSB Business Opportunity Specialists.

The newly named "Director of Management and Technical Assistance" is showing a commendable approach to preparing for these responsibilities. We have urged him to consult individually with the ARA-MSB/COD in each Region to identify the best case studies of client problems and the most successful techniques of providing client assistance.

Such examples of "lessons learned", done with professional excellence, can serve as superb training aids nationwide.

It is hoped that the 7(j) Program might support this type of effort by making the 7(j)(10) Awardee in each Region responsible for preparing at least one case study per year for each District in the Region, using the Harvard Business School model for case content. The immediate uses would be to furnish the educational programs with live teaching materials and to assist the Career Development Board in choosing the types of training and education required for Certificates of Achievement. In addition, annual awards might be made within MSB for the most significant cases having wide application.

In addition to supporting the Career Development Program, these cases should help the Director of Management and Technical Assistance to tailor the 7(j) Awards within each Region to meet its specific needs. We were repeatedly impressed with the fact that the four broad business classes into which 8(a) firms fall (Manufacturing, Construction, Non-Professional Services and Professional Services) each has its own special problems, and that the nature of the problems within a business class may vary from year to year depending on the age of the firms and the mix of their customer base between the government and commercial sectors.

In this needs assessment undertaking, the NAPA Study Team also suggests that interested members of the Regional/District SCORE groups be encouraged to participate. We were impressed with the action of the Region VI RA in analyzing the 1300-member SCORE/ACE membership in his Region to classify individuals by specialties and interests.

Review of Recommendations to Launch a Creative Program to Enhance Workforce Effectiveness

Part IV offered six recommendations to institute a comprehensive portfolio management program. Part V adds recommendations specifically concerned with workforce performance:

Recommendation 7: Appoint a full-time "Director of Workforce Effectiveness" to devote nationwide attention to these matters.

Recommendation 8: Consider broadening the MSB Procurement Career Program to the "Procurement and Business Opportunity Specialist Career Program", tailored to the MSB/COD occupations and skill requirements.

Recommendation 9: Continuously assess client needs as a basis for designing 7(j) Awards and sharing experiences among MSB Business Opportunity Specialists.

Finally, Part VI suggests recommendations to ensure effective accountability for MSB/COD Program performance.

Part VI
ENSURING
ACCOUNTABILITY FOR MSB/COD PROGRAM
PERFORMANCE: FUNCTIONAL MANAGEMENT CAN WORK

Administrator James Abdnor, in his "State of the Agency" address before the District Directors in June 1987, set forth a management philosophy which NAPA the NAPA Study Team heartily endorses--the need for teamwork and accountability:

"I want SBA to be a team. I want us all working together. I want all of us from the Central Office to the field offices to be aware of the workings of SBA. I want all of us from the Central Office to the field offices to constantly communicate with one another. Then, and only then, will we truly function at our full capabilities.

"We are going to combine teamwork and communications with consistency and, of course, the fairness which follows."

The principal theme stressed in Part IV on portfolio management, and in Part V on workforce effectiveness, is the need to have full participation of the MSB professional staffs, from the Central Office to the 66 field offices, to jointly plan better portfolio management and to upgrade business development skills.

There is today inadequate attention from the Central Office to the Regions -- and from the Regions to the Districts -- in these matters. This lack of full involvement has been attributed by those we have interviewed to an obsession in the past with "decentralization." While we strongly endorse the concept of local program execution, we applaud the Administrator's recognition that National leadership is essential, based on continuous communications and a creative search for improvements.

Are There Models of Sound Functional Management for SBA?

Over many years an outstanding model of effective functional management (termed by the military as line-and-staff relationships) has been the National Aeronautics and Space Administration. NASA has defined the role of functional management as:

"the centralized professional leadership, coordination, overview and guidance of agency-wide activities in a given technical or administrative functional area to assure effective and efficient performance. It involves highly trained, specialized professionals in Headquarters and in counterpart organizations at each installation."*

The authorities of the functional manager are cited in this same directive as encompassing the following:

- "a. Establish policy, requirements and standards by which the operation is conducted throughout the agency.
- b. Review and provide guidance on proposed allocations of personnel, funds and other resources required by an installation.
- c. Prescribe such reporting requirements as are necessary to identify emerging problems, and provide a basis for appraisal and evaluation.
- d. Conduct such surveys and reviews as are required for continuous review and evaluation of operating practices throughout the agency."

* NASA Management Instruction 1240.1A, dated August 18, 1980.

These principles are equally applicable to the management of the MSB/COD Program throughout SBA. They are clearly the reasons we urge the appointment of a Coordinator of Marketing and a Director of Workforce Effectiveness at the Central Office, and counterparts for each at the Regional level.

In this final chapter we will examine other areas in which clear-cut responsibilities should be better identified at Central and Regional Offices to oversee the District organization.

Six concluding recommendations are made to supplement the nine contained in Parts IV and V.

Recommendation 10: Assure that the AA for MSB/COD has a strong voice in appointing well-qualified professional counterpart staff to manage the program at Regional (ARA) and District (ADD) levels.

It was surprising to us to find that there is uncertainty today as to whether the AA-MSB/COD has a key role to play in selecting his counterparts. The NAPA Study Team believes the AA for MSB/COD should have this role and should be accountable to the Administrator for selecting highly qualified staff for these positions.

NAPA recognizes that the line organization (District Directors and Regional Administrators) must have a major voice in staff selections for all programs, but the expertise in the program and knowledge of its leaders resides in those who are SBA's top management for a given program area.

The NAPA Study Team thus recommends that the ARA-MSB/COD be an active and equal partner with the District Director in evaluating the slate of candidates to fill the Assistant District Director MSB/COD post. In the same manner, the AA-MSB/COD should be fully involved in selecting the incumbents of the Assistant Regional Administrator MSB/COD positions.

If, in either case, there is an inability to agree, then this vital decision should be escalated to the next higher level of management — and, if

necessary, to the Administrator himself. No compromise with highest quality should be tolerated.

Recommendation 11: Appoint a full-time "Director of Management Information Systems and Budget" to develop the MSB systems design and to coordinate systems improvements now in process.

We found an impressive momentum, at the Central Office and in the field, to modernize SBA's management and financial information systems over the next three years. The 8(a) segment of this modernization is especially urgent and complex. This weakness was singled out by the Senate Committee in its May 1987 report which gave major stress to the need for accurate and up-to-date files on program graduates and participants.

MSB has long been aware of the need for overhauling the MIS system so as to put truly comprehensive and current management data in the hands of managers at all levels. Today's mainframe data base is used primarily by Central Office in responding to numerous inquiries (over 200 internal and external this fiscal year). It is not sufficiently current for field use, and has not been given enough attention by the field offices which must input the data on firms and contracts.

On their own initiative, excellent plans for field improvements have been made in some Regions -- notably Region V -- and we learned of a current effort to fully test this system in Regions III and IX under the leadership of the RA for Region IX.

Another major building block in these commendable efforts is an extensive needs assessment study conducted for MSB by a contractor* in 1984.

* Applied Systems Institute, Inc., October 1984, Contract No. SBA-7225-MSB-83.

The one missing factor today is an MSB professional with a manager's perspective who can devote full time to systems design and utilization over the next three years. At the meeting of the ARAs in Boston in August 1987 this gap was identified, and we understand it will be filled. (See discussion outline, Appendix N.)

We would like to offer one additional suggestion. This Director will be heavily involved with the Comptroller's Office in helping to meet its needs as well as those of MSB for data on the 8(a) and 7(j) programs. An allied need to bolster MSB activities is systematic annual planning of the budgetary resources required for operating costs — especially travel — by each District and Regional Office. This system should be a true "bottom up" planning process to support the major initiatives to improve Portfolio Management and Workforce Effectiveness discussed in Parts IV and V. Hence, the NAPA Study Team urges that the new Director of Management Information Systems be given an additional responsibility for designing and implementing the budget planning and execution system. While final decisions for apportionment of funds reside ultimately with the District Directors, it is essential that shortfalls in MSB needs at all levels be known to the AA for MSB/COD, so that he can stress any restrictions which such shortfalls place on serving SBA's clients and on improving the skills of its front-line professional staff.

This new Director should report to the new Deputy AA-MSB for Operations.

Testing Ideas for Change

Permanent changes to the 400-page Standard Operating Procedure must understandably emerge slowly so as to weigh the impacts across the wide spectrum of clients, contracts and District Offices. Rather than delay changes indefinitely, however, the Study Team suggests that SBA undertake selective testing of ideas that merit such assessment.

Recommendation 12: Encourage selective testing of imaginative ideas in search of continuous improvements.

During the Study Team's field visits and Central Office interviews, we listened to many improvement ideas. They are highlighted here as among the candidates for planned tests under the direction of the Deputy AA for Policy and the Deputy AA for Operations:

Candidates for Selective Tests

1. Expediting eligibility process. This is widely desired, in and outside of SBA. SBA staff offered two suggestions for test: (1) drop the Regional Office review phase in one Region for a six-month period to ascertain feasibility and impact on time; and (2) delegate the national buy support step (1017) to one or more District Offices to test feasibility and time impact.
2. Reducing the backlog of applications. This is a highly varied matter, with Washington, D.C. being the most difficult. The Director of Eligibility has advocated use of a specialized individual or unit to concentrate on applications and this should be encouraged on a test basis in a number of locations, at the District and Regional levels. Another suggestion to cope with excessive application backlog is more rigorous enforcement of the two-year rule for new firms. Still another is to test the idea of scheduling application acceptance dates at pre-set intervals during the year ("open seasons") so as to smooth the flow of applications. A fourth idea is to prepare videotapes, which can be viewed at the prospective applicant's convenience at each District Office, instead of forcing applicants to wait for a scheduled workshop.
3. Dropping or more tightly controlling advance payments. This appears to be a highly controversial tool. It appears that the complexity of the process, and the fact that contract administration is fully delegated to the buying agency, makes SBA's management of these "interest-free" loans difficult and risky. One suggestion has been to

consider centralizing authorizing authority, centralizing disbursement functions or imposing additional restrictions (Comptroller memorandum, September 11, 1987). Another suggestion is that the Regional Counsel be given final control over all disbursements in the Region (Region VI). Both ideas have merit, and the Study Team believes one should be selected for early trial. A procedure for write-off of delinquent accounts also appears essential (Los Angeles).

If advance payments are eliminated, there are two alternatives that have been mentioned: (1) to have F&I and MSB work with banks to provide funds under "guaranteed contract receivable financing" (Newark); and (2) to leave this arrangement to the buying Agency under the Federal Acquisition Regulations.

4. Dropping, modifying or more tightly controlling Business Development Expense Grants. Wide support exists for major reform. At a minimum, some feel SBA should outlaw the use of grants to cover price differential. Regions with little use of manufacturing contract support tend to favor total elimination on the grounds that other forms of financing should be sought, with SBA help, and that it is impossible to be fair in allocating funds. If retained for capital equipment grants, the Study Team believes support exists for fully centralized control at the Central Office, without the requirement to identify with a specific contract. In the near term this latter alternative appears useful for test if Congress continues the appropriation. The Study Team also urges greater utilization of Defense equipment reserves, working with their SADBUs.

5. Clarifying the MSB role as prime contractor. Some are concerned that this arrangement is misleading since SBA is in reality a catalyst seeking to help the 8(a) firm learn the techniques of federal negotiated bidding and helping to arrange a fair deal for both parties. Since statutory revision would be needed to redefine this role, we give it a lower priority in the near term, but suggest that the Council of SADBUs would be an appropriate forum to consider

alternatives.

6. Further exploring of the advantages and disadvantages of centralized contract functions at the Regional Level. Region IV has had a successful experience and has improved District Office productivity. Region VI once practiced this centralization with good results, until a shortage of travel funds made it difficult for such a widely dispersed Region. The Study Team believes that various combinations of centralization and decentralization should be practiced, depending on workloads and the need for specialization. Such opportunities might well be considered in the annual Portfolio Management Reviews proposed in Recommendation 1 (Part IV).

7. Introducing competition into the Business Development Plan. This is another universally discussed objective, but one where flexibility is desired to avoid mandates that might prove harmful. This again would appear to be a subject for exploration in the annual Portfolio Management Reviews. At a minimum, it appears that SBA should give more consideration to encouraging "Technical Evaluations" early in the 8(a) firm's participation, to be followed by competitive initiatives in the commercial sector and the new DOD "Small Disadvantaged Business (SDB) Set-Asides". Case studies should be sought to inform both the BOS staff and the 8(a) firms of the challenges and benefits of this gradually evolving process of competition.

8. Increasing attention to the MSB/COD Program by the Inspector General's staff. The Study Team believes this is a long overdue requirement to expose program vulnerabilities and to help the AA-MSB/COD establish "red flags" which should receive his attention as soon as identified by the MIS System. Today, the lack of staff makes it impractical for the IG to do more than react to problems when they suddenly emerge. We believe that, at a minimum, a dedicated staff team should be devoted to test audits and investigations in search of the high vulnerability areas. One key list is the top 100 firms in contract volume: they received 53% of dollars

awarded in 1984, 50% in 1985 and 56% in 1986. The IC's staff has suggested that the top 20 contractors might be selected to "analyze why they received the number of contracts awarded, whether other 8(a) firms were available which could have received awards, and determine whether there was any unusual effort by SBA management to direct that the contracts be awarded to selected firms". A second approach suggested is to "analyze by SIC Code why 878 (29.74%) of the 8(a) active firms in the program have not received a contract since being admitted to the 8(a) program". Both of these approaches are highly desirable, in the Study Team's opinion, as first explorations.

9. Using creative career development techniques. As suggested in Part V, the MSB/COD Program is a never-ending learning process for its professional staff. One suggestion is that one or more Presidential Management Interns be assigned to MSB for an extended learning experience at District, Regional and Central Office levels. Another frequently mentioned idea is to arrange informal details of BOS personnel to an 8(a) firm for a limited period to observe its operations and learn its problems. A third idea is to utilize the Intergovernmental Personnel Act for details of MSB personnel to universities and nonprofit organizations for a specified period. These and similar arrangements appear worthy of trial under the leadership of the proposed "Director of Workforce Effectiveness".
10. Organization innovation. We have already noted the possible advantages of: specializing portfolio assignments by business class; specializing processing, contracting and business development where workloads permit; and centralizing contracting at the Regional level where conditions favor this, as in Region IV. The experience in Region I suggests that some further measure of centralization at the Regional level might be tested in selected cases by bringing the local District Office and the Regional MSB staff together in the interest of personnel economies and productivity. The danger, of course, is that Region-wide initiatives might suffer -- which we would certainly oppose. However, skillful trial of this arrangement is certainly a

candidate for a one-year test.

Finally, the Washington, D.C. District Office will continue to pose a special challenge. Three options have been suggested for consideration during our interviews: (1) to elevate the District Office to stand-alone status reporting to the Administrator, emulating the practice of the GSA National Capitol Region; (2) to separate out workloads for a Northern Virginia Branch and possibly a Maryland Branch; (3) to appoint separate Assistant District Directors for each of the Sections of MSB staff, (i) Business Development and Processing and (ii) Contracts. While these ideas are worth pursuing, we urge in the near term conducting Portfolio Management Reviews (Recommendation 1) as the first step, and the Workforce Effectiveness Inventory (Recommendation 7) before planning further organization changes. It is likely that the improvements in workforce skills and productivity will prove to be the most urgent actions.

As a test discipline, the Study Team suggests that the Administrator meet twice monthly with the AA-MSB, the Region III RA and his ARA, and the Washington District Director and his ADD to review progress and problems.

Professionalize MSB/COD Image and Operations

We are struck with the low level of public understanding of the MSB/COD program as it has evolved over the past twenty years, and its perception as a give-away scheme riddled with political pressures.

Only when one is exposed first-hand to actual success stories, and the personnel in the Districts who are performing the day-to-day counseling, does one begin to sense the excitement and high potential of this effort -- and the importance of the role played by SBA, the Department of Commerce and the numerous buying Agencies.

Recommendation 13: Seek public understanding through highly professional publications and exhibits of the MSB/COD Program and its achievements.

In Part III we referred to the excellent profiles of 8(a) Graduates of the Year, shown in Appendix L, and the honorees at the MedWeek events -- industry and minority-owned firms. We urge that the detailed case studies of such successes be prepared as training aids, using the 7(j) Program as a continuing source of the such materials in each Region.

The Study Panel recommends that MSB's Director of Outreach do the following to enhance public education:

- Publish a monthly news digest of activities to tell the MSB story to its personnel on the front line and its sister organizations in SBA and outside. This compilation of newsworthy items from each Region would be an ambitious undertaking, but should be a regular responsibility of the Coordinators for Workforce Effectiveness.
- Arrange once each year for a public outreach seminar in each Regional city. The Seminar would display a number of exhibits to tell the story of how MSB firms were assisted in achieving competitive viability. These displays would include business, educational, state, local and community organizations and other SBA and Commerce programs. Hopefully the cost of such sessions would be borne by contributions of all participants.
- Arrange for the SABDUs to participate in both the of above efforts so that their staffs in turn will benefit.

Recommendation 14: Stress the orientation of all personnel in the Code of Conduct (SOP 37-35) and in rigorously observing ethical standards.

Several field officials stressed the importance of adding these items to the Career Development Program for Business Opportunity Specialists. It was likewise emphasized in our discussion with the Director of Personnel at

Central Office.

The high visibility and sensitivity of the MSB/COD Program places continuing importance on the need to emphasize integrity, along with the need to hold candid discussions on how to cope with the barrage of letters and phone calls that are sometimes encountered from highly placed officials.

The response of the District Directors to the recent questionnaire study by the AA-MSB/COD reflected the deep awareness of these career officials to this problem:

- Seventy-four percent of the District Directors answered "Yes" to the question: "Is the MSB/COD Program overly influenced by political considerations?"

One suggestion which has high appeal to the NAPA Study Team is a videotape discussion by the Administrator and selected key officials (including the top MSB team and the Inspector General) of the essentiality of exceptional standards of integrity in all SBA Programs, with clear guidance on how to handle correspondence from Congress and other high level sources, and instructions as to how and when to communicate with the Inspector General. The role of the CICR should also be explained.

Some agencies have found periodic emphasis on the use of an Agency hotline to be beneficial for employees and external sources. This may be useful to mention in the orientation discussions or videotapes that should be developed for SBA-wide viewing.

In addition, it may be useful to stress the role of the Inspector General as an Ombudsman within the SBA to permit employees to communicate and discuss problem areas within SBA without fear of reprisals from management.

We believe these suggestion would be welcomed and respected by SBA employees.

Recommendation 15: Consider using a portion of the 7(j) funds to sponsor and support a dedicated "Management Research Institute" with a long-term charter.

Exhibit 5 illustrates the recommendations made in this report as they affect the relatively small Central Office of the AA-MSB/COD.

This chart suggests a number of new or expanded responsibilities for the AA-MSB/COD. However, each is an added role for a fully occupied Director or a new Director in two cases. It will be very difficult for these staff leaders to do more than implement the initiatives which have been discussed. The research and planning which are universally needed will inevitably be neglected.

To meet this challenge, the Study Team recommends that a permanent nonprofit organization be established with SBA sponsorship to assign dedicated staff members to the research needed to support all key MSB Program Offices in the following functions:

- portfolio analysis
- market research to set goals for future portfolios as to both size and composition
- market research into future contract support
- client needs analysis by ethnic group, business class and business development function

The findings of such studies could be used as input for designing training programs for both 8(a) client firms and MSB staff members.

There are precedents for the type of Institute proposed, notably in the DOD, where dedicated organizations such as the Rand Corporation, Logistics Management Institute, Institute for Defense Analyses, Center for Naval Analyses and others have long served their client organizations.

Review of Recommendations to Ensure Accountability for MSB/COD
Program Performance

Recommendation 10: Assure that the AA for MSB/COD has a strong voice in appointing well-qualified professional counterpart staff to manage the program at Regional (ARA) and District (ADD) levels.

Recommendation 11: Appoint a full-time "Director of Management Information Systems and Budget" to develop the MSB systems design and to coordinate systems improvements now in process.

Recommendation 12: Encourage selective testing of imaginative ideas in search of continuous improvements.

Recommendation 13: Seek public understanding through highly professional publications and exhibits of the MSB/COD Program and its achievements.

Recommendation 14: Stress the orientation of all personnel in the Code of Conduct (SOP 37-35) and in rigorously observing ethical standards.

Recommendation 15: Consider using a portion of the 7(j) funds to sponsor and support a dedicated "Management Research Institute" with a long-term charter.

Part VII

COMPLETE LIST OF RECOMMENDATIONS

This study of the MSB/COD Program has examined the organization and operation of these activities in the Central Office, six Regions and 13 District Offices. We have found an organization with basic strengths and a clear recognition of its opportunities for improvement.

To that end we propose that SBA Management adopt three key objectives and undertake 15 actions:

First Objective: Institute a Comprehensive Portfolio Management Program

1. Analyze all Portfolio Managers' assignments and the condition of their portfolio at least once each year to enhance their effectiveness and productivity. Utilize peer reviews. (Page IV-8)
2. Establish five-year goals for portfolio development in each District based on these and related analyses. (Page IV-10)
3. Form a "Council of SADBUs" at the National level to encourage effective Agency support of the MSB/COD Program and to increase contract support throughout buying activities. (Page IV-11)
4. Inaugurate a collaborative relationship between the AA-MSB/COD and the AA for Procurement Assistance, and their field associates. (Page IV-12)
5. Establish National and Regional "Coordinators of Marketing" to oversee national buying contract support and plan more systematically for future 8(a) portfolios. (Page IV-13)

6. Encourage Regional Administrators to hold "Partnership Workshops" with the ARAs and District Directors to foster optimum meshing of services. (Page IV-14)

Second Objective: Launch a Creative Program to Enhance Workforce Effectiveness

7. Appoint a full-time "Director of Workforce Effectiveness" to oversee training and career development for entry-level and front-line staff. (Page V-4)
8. Broaden the MSB Procurement Career Program to the "Procurement and Business Opportunity Specialist Career Program," tailored to the MSB/COD occupations and skill requirements. (Page V-5)
9. Continuously assess client needs as a basis for designing 7(j) Awards and sharing experiences among MSB Business Opportunity Specialists. (Page V-7)

Third Objective: Ensure Accountability for MSB/COD Program Performance

10. Assure that the AA for MSB/COD has a strong voice in appointing well-qualified professional counterpart staff to manage the program at Regional (ARA) and District (ADD) levels. (Page VI-3)
11. Appoint a full-time "Director of Management Information Systems and Budget" to develop the MSB systems design and to coordinate systems improvements now in process. (Page VI-4)
12. Encourage selective testing of imaginative ideas in search of continuous improvements. (Page VI-6)
13. Seek public understanding through highly professional

publications and exhibits of the MSB/COD Program and its achievements. (Page VI-11)

14. Stress the orientation of all personnel in the Code of Conduct (SOP 37-35) and in rigorously observing ethical standards. (Page VI-11)
15. Consider using a portion of the 7(j) funds to sponsor and support a dedicated "Management Research Institute" with a long-term charter. (Page VI-13)

APPENDIX A
NATIONAL ACADEMY PROPOSAL,
DATED JULY 17, 1987

National Academy of Public Administration Foundation

Proposal to Conduct a
Management Review of the Organization
and Operation of the Minority Small Business
and Capital Ownership Development Program
(MSB/COD)

prepared in response to the
Small Business Administration

July 17, 1987

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION FOUNDATION

I. INTRODUCTION

The National Academy of Public Administration Foundation is pleased to submit this proposal in response to the needs of the Small Business Administration.

The National Academy of Public Administration was established in 1967 as a source of independent advice and counsel on making government work. It exists solely to help government achieve excellence. By seeking the very best management practices in both the public and private sectors, National Academy studies have helped federal, state, and local agencies achieve new levels of effectiveness. Over the past two decades, the Academy has conducted 150 such studies. Moreover, these studies continue to lead the agenda of innovation in public administration and policy. The unique resource of the National Academy is its membership, composed of more than 350 distinguished practitioners and scholars of public administration—former Cabinet members and governors, White House officials, prominent business executives who have served in government, and professional government managers and scholars specializing in public affairs. Like other professional academies, the National Academy's members are elected by their peers and are representative of all levels of American government.

Members represent a diversity of backgrounds and experience at every level of government, from local to national to international. All share one important characteristic—they have made a sustained contribution to the field of public administration. Participation in the Academy's work is a requisite of membership, and the members offer their experience and knowledge on a voluntary basis.

In 1984, President Reagan signed legislation granting a federal charter to the National Academy of Public Administration. It is the first such charter since President Lincoln signed the charter for the National Academy of Sciences in 1863. Upon signing the charter, President Reagan expressed his "hope and conviction that future Administrations and Congresses will profit from the research and counsel provided by the National Academy to increase the effectiveness of government." As the National Academy approaches its twentieth anniversary, the need for effective public management has never been greater.

The National Academy maintains a core professional staff which is regularly augmented by study teams recruited for their superior qualifications to contribute to specific projects. Panels composed of members and invited experts from science, business, labor and other relevant fields direct project and study activities. The business and leadership functions of the Academy are guided by an elected 15-member Board of Trustees. The President of the Academy is appointed by the Board to direct the operational activities.

The National Academy is supported in part by an endowment raised from its members and a variety of foundations and corporations; by the Webb Fund for Excellence in Public Administration which accepts contributions from corporations and individuals; and by sponsoring organizations and foundations for specific projects. It is recognized as a charitable non-profit corporation under Section 501 (C)(3) of the Internal Revenue Code and contributions to the Academy are tax deductible. It is not federally funded.

The National Academy's research and study program provides assistance under contract to government agencies, foundations, corporations and associations. These studies have contributed to a growing body of knowledge on all aspects of effective governance. From better financial control to innovative human resource management, from effective public procurement to less costly regulation, from new businesslike approaches in state and local government to the structure of federal field operations, the Academy is making significant contributions toward more effective public management.

The Academy is especially well suited to meet SBA's requirement for a source of independent analytical ability, counsel, and advice on any issues confronting the Agency in the administration of the public business entrusted to it. That is indeed the basis for the congressional charter of the Academy, as outlined above.

This proposal is presented in sections II - V, as follows:

- II. The Overall Objectives of the NAPAF Review
- III. Approach to the Proposed Review
- IV. Plan for Staffing and Oversight By the National Academy
- V. Budget - Cost or Pricing Data

II. THE OVERALL OBJECTIVES OF THE NAPA REVIEW

The study will be a comprehensive examination of the organization, operation and staffing of the Minority Small Business and Capital Ownership Development Program (MSB/COD) program nationwide. The conclusions and recommendations will provide an objective, professional review of the strengths of today's management results, and a definition of key opportunities for future management improvements.

It is not the purpose of the study to be a critique of the program itself, except to suggest possible revisions in management practices that will lead to more successful implementation of the goals outlined by Congress in the Small Business Act, Public Law 95-507, and Public Law 96-481. These overall goals, as we understand them, are to foster the economic development and ownership of businesses by minorities, utilizing Federal contracts as one of the key tools.

III. APPROACH TO THE PROPOSED REVIEW

We understand that today there are approximately 3,000 minority firms participating in the program, with a continuous inflow of new participants each year, and an outflow of "graduates" who have achieved, or will achieve, the ability to be self-sustaining.

The program is conducted by SBA's network of 66 District Offices, who are directed by the ten Regional Offices, under the nationwide leadership of the Associate Administrator of the Office of Minority Small Business and Capital Ownership Development. The staffing plan today provides a total of 360, of whom 25 are at Headquarters and 275 are in the field. This contrasts with a total of about 344 in FY 1982 when the portfolio of active participants was about 2300 compared with today's 3,000.

The fact-finding plan we envision would be designed to achieve four detailed objectives:

First, a comprehensive grasp of the findings of past studies by SBA, GAO, and the Congress as to management issues of highest concern.

Second, an in-depth understanding of the policies and objectives of the program today and the key improvements which the Administrator and the Associate Administrator have articulated in their recent reports to Congress.

Third, a thorough grasp of the functions performed at Headquarters and in the field — and any issues or problems being experienced which this management review should consider.

Fourth, an understanding of the interface between SBA and procuring agencies who make prime contracts with the SBA 8a program — and their ideas of opportunities for improved operating relationships. In this connection we will document relationships with other SBA programs, with the Department of Commerce Minority Business Development program, and with Federal prime contractors who are expected to set subcontract goals.

We envision conducting the above fact-finding in four steps, spanning about four months:

STEP ONE — Intensive Interviewing: Eight Weeks. During this period we would interview key personnel at Headquarters, in selected Regions and Districts, in selected Federal agencies, and among selected 8a participants: both active and graduates. Flow charts of operations would be prepared, and records sampled to test timeliness and performance of activities. Examples of successful experiences, as well as problems would be sought. CST
TUN

STEP TWO — Selected Case Studies: Three Weeks. Based on the step one findings, we would choose a few examples of good and poor experiences and do further research into lessons learned. It is assumed that special attention might be given to such issues as timeliness in processing applications, effectiveness of Business Development Expense actions, adequacy of assistance under the 7j program, effectiveness of transition planning for firms graduating from the program, adequacy of staffing and career development programs for key SBA staff (Contract Specialists, Business Opportunity Specialists), responsiveness of Federal agencies in choosing contract opportunities and assisting firms to perform effectively, success of prime contractors in utilizing subcontract opportunities to support the 8a program, etc.

STEP THREE — Initial Findings and Recommendations: Three Weeks. At this point the study team would prepare an overview of key findings and tentative recommendations for oral discussions with key SBA personnel.

STEP FOUR — Preparation of Final Report: Three Weeks. This would be prepared based on the outcome of the above three steps.

A progress report to SBA management would be provided at the conclusion of each of the above Steps I - II- III.

IV. PLAN FOR STAFFING AND OVERSIGHT BY THE NATIONAL ACADEMY

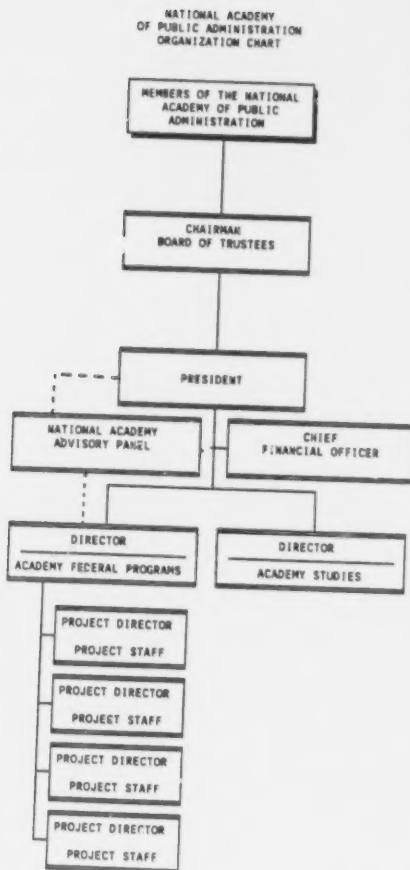
To accomplish the four step study plan, NAPA would assign a special team of procurement and management experts, and assemble a Panel of experts from NAPA's membership (as well as others well known to NAPA) to exercise continuing oversight of the project and contribute to the formulation of the recommendations.

To meet this schedule it would be important for SBA to designate a focal point for continuing assistance in making appointments. Work space at SBA Headquarters would be very important.

The NAPA staff team would consist of a Project Director, full time, Mr. Thomas Morris, former Assistant Secretary of Defense Installations and Logistics (which included all procurement and the small business program); Commissioner of the Federal Supply Service; and Inspector General of the Department of Health, Education and Welfare. Mr. Morris will be assisted part-time by a senior staff expert selected by NAPA, and with other research and administration support furnished by NAPA.

The Oversight Panel will be chaired by the President of the National Academy, Mr. Ray Kline, former Administrator and Deputy Administrator of GSA and a long time NASA official. The total Panel (still being selected) would include about seven members who have held significant Federal posts and have knowledge of Federal procurement and a clear appreciation for Federal Socio-Economic programs.

A copy of the organization chart of the National Academy is shown as Figure 1.



APPENDIX B

SYNOPSIS OF SELECTED PAST STUDIES
OF THE S(A) PROGRAM

Appendix B

SYNOPSIS OF SELECTED PAST STUDIES OF THE 8(A) PROGRAM

1. SBA Office of Audit, 1969

Early audit. 31 contracts had been awarded; 8 were examined. Central Office only. Serious weaknesses found.

Lack of written standards. Lack of firm criteria. Constant change. Documentation was poor on assistance given and how the price was judged reasonable.

SBA did not then feel that it was responsible for determining success of firms. Lacked basis for improving its procedures.

Was activated in early 1968 to help hard-core unemployed minorities. Later it was expanded to help minority ownership. Role was assigned to Office of Business Development. 14 personnel at the time.

Early problems involved advance payments. Even then the procuring Agencies were resisting the program.

2. Internal Audit Division, July 16, 1973

Weaknesses found in 1969 still existed. Field offices examined. Controls lacking. Full range of problems in selecting and managing program firms and assessing results. Action promised.

3. SBA Office of Audit, 1977

Needed more stringent criteria for defining 8(a) firms. Examined Regions II, III, IV, VI and IX. Adverse publicity.

SBA introduced the idea of a sponsor. Referred to a GAO study of sponsored firms, finding the need for more oversight. The audit proposed dropping the sponsorship idea and studying the SBA organization structure. This was agreed upon.

4. Interagency Report on the 8(a) Program for SBA Administrator Weaver, January 31, 1978.

Chaired by Deputy Administrator Patricia Cloherty. This report was made at a time when the program was under intensive scrutiny by the Congress, leading to the passage of PL 95-507. Seven Agencies participated.

The report concluded that the "problems confronting the program are complex and do not lend themselves to simplistic solutions". A principal conclusion was then offered: "[T]he business development goals of the 8(a) program have not been adequately supported by the necessary personnel

resources and agency commitment that would allow reasonable expectations of program success."

This report is a remarkable document in that it was an interagency identification of the key issues which persist today. It stressed the business development mission of the program, expanded personnel resources, and a major training program to include not only procurement but financial analysis and program management. The warranting process was emphasized. Better procuring Agency support was advocated. Decentralization was advocated with Central Office oversight. The need for tight controls over BDE and advance payments was discussed, as was multi-year planning.

5. GAO, February 1978: Increase Number, Type and Timeliness of 8(a) Contracts

For Senate Small Business Committee. GAO found that to bolster the program it needed: more staff to develop the portfolio; better MIS; improved technical and management assistance; and better use of business development funds. Refers to a 1975 study on the difficulty SBA faced in controlling the flow of contracts into the SBA from the Agencies. From 1967 to 1977 awards of \$1.6 billion had been made. There were 1497 firms on September 30, 1977, and 139 had been graduated.

The program was managed through the Assistant Regional Administrator for Procurement Assistance and District Directors. There were Business Development Specialists—the middlemen for securing contracts from the procuring Agencies and seeing that assistance was provided to the 8(a) firm.

There were PCRs (Procurement Center Representatives) throughout the United States at Federal Agencies to increase the share of awards to small businesses. PCRs arranged set-asides when enough competition existed. Negotiation was handled by Contract Negotiators. The report made reference to an Interagency Committee which set goals and to the SBA Office of Minority Business Enterprise, which arranged assistance. Thin staffing, lack of information and under-use of Business Development funds were problems.

6. GAO, March 1978: How Eligibility Criteria Are Applied

House Committee on Small Business, Subcommittee on Minority Enterprise and General Oversight. Region IX was chosen for case studies. Found eligibility criteria vague. Files did not document the reason for eligibility in individual cases. Offices differed in their interpretation of the criteria for eligibility. There was disagreement as to whether the test was social or economic.

7. SBA Office of Audit, January 1979: Review of Business Development Expense

The study found lack of adequate justification and control over use of these funds. Capital equipment purchased not justified. Regions varied widely.

8. OIG External Audit, April 1979: Advance Payments to Subcontractors

Covered 27 8(a) firms in six Regions. Found differences among Regions in extent of delegation to Districts.

Found wide abuses of purpose and controls. Of \$61 million, \$17 million estimated to be noncollectible. \$1.5 million already written off--or a total of 11.9%. 78% of problems in New York City. Job of the Associate Administrator for Procurement Assistance. Justice Department would pursue four cases. Eleven recommendations to include relations with other support programs like Business Development Expense. Authority was 41 USC Section 255. It is of interest that in this time frame a new Associate Administrator for Minority Small Business was being established to pick up the program from the Associate Administrator for Procurement Assistance.

143 contractors had received payment advances; four Regions had provided almost none: V, VII, VIII and X. Regulations permitted advances of up to 90% of the price.

Key recommendation was that each Region designate a qualified individual to monitor and control transactions.

9. IG Internal Report, August 1979: General Management

Of 1505 firms reviewed, 526 were problems. Most of the problems were in Regions II, III, VI and IX. III had by far the biggest problems. 29 had been referred for other investigation.

Criteria covering ownership and control inadequate. Eligibility criteria were inadequate. More objective procedures for graduation needed. Failing firms needed to be terminated. Terminated firms needed to be removed from the program. Terminations were possibly needed for illegal or improper actions.

10. GAO, January 1981: Pilot Program Has Not Been Effective

PL 95-507 of October 1978 authorized a two-year pilot program with one Agency designated by the President. The regular program was a volunteer program. The pilot was a demand program by SBA. GAO was mandated by PL 95-507 to evaluate the two-year pilot program. Army was selected as the pilot Agency. Later, under PL 96-481, the President designated NASA, DOT and DOE as pilot Agencies.

Initial awards poor. Firms not well evaluated to receive contracts. Field offices not used.

Purpose of the 8(a) pilot program not agreed upon. Was it for bigger contracts or high tech? Was it to get more procurements from Agencies which had not had a good 8(a) history? GAO favored the latter. Army was then the best Agency in the program.

Found that SBA should demand contracts not normally part of 8(a) and assure qualified firms were chosen. Improved data base on firms needed. Stated OIG should be used to assess success.

11. GAO, April 1981: An Unfulfilled Promise

One of a series under PL 95-507. 4598 firms in 12 years. \$5.5 billion. 2000 firms active. Noncompetitive contracts, plus management, technical, marketing and financial aid. Only 166 graduates. Several firms in program 7 to 11 years. GAO questioned whether 28% of the firms in its sample should remain. Most firms viewed the program as an end in itself and were just interested in more business. Over half were dissatisfied with SBA. Found that keeping firms in too long denied help to others, and that Procuring Agencies and big businesses should shoulder more of the burden.

Goals were in terms of dollar volume and number of firms. In 1980 the dollar goal was \$3.8 billion, of which \$1.6 billion was to be 8(a) and \$2.2 billion was to be direct prime awards and subcontracts by prime contractors. Forced SBA to play a numbers game as a "contract broker" instead of serving as a real helper in developing competitive businesses.

PL 95-507 was supposed to have given greater emphasis to Business Development. The number of Business Development Specialists was increased from 64 to 126 in three years, but the number of firms increased from 1482 to 2138. Total number of contracts awarded in 1980 was 5086.

Recommended that a BDS should have only 8-10 firms, instead of the 17 that a BDS had in 1980. Many BDSs lacked skills. Most were outreach specialists, and BDSs also had to process applications and make field trips.

Criteria for graduation were subjective. Files inspected showed that at least one year of business plan data and financial results were missing from a high percentage of the files.

PL 96-481 was designed to put more discipline into the graduation process. But the vague criteria worked against this.

Alternatives presented:

- A. Continue present effort. Try to overcome problems. Probably means less attention to Business Development Program.
- B. Reduce size as proposed in 1975. Yet this may not be realistic—it has steadily grown.
- C. Establish a two-tier program. This would provide noncompetitive awards for a predetermined period, and then participation in a special Set-Aside Program on a competitive basis. Then graduation.
- D. A Set-Aside Program only. SBA would not be the middleman.

Found that SBA should fill vacancies and train BDSs. SBA was critical and preferred Alternative A. GAO urged more attention to adverse effects on other disadvantaged firms.

12. GAO, October 1981: Misuse for Purchase of ADP Equipment Has Increased Costs

Report to Brooks. The problem was one of allowing 8(a) firms to simply be brokers and to allow Agencies to buy ADP equipment that could not otherwise be justified. SBA contended it was moving to remove these abuses.

13. IG Audit on Norman Hodges & Associates, December 1981

Possible criminal behavior of firm enrolled since 1977. SBA provided \$2 million in assistance for a \$200,000 micrographics contract over a ten-month period. Included \$850,000 for capital equipment and \$300,000 for working capital. More qualified firms were available. Loans were made without statutory authority. A Management Assistance (7(j)) contractor was also an officer of the 8(a) firm and received consulting fees of \$295,000.

14. IG Study, May 1983: Business Development Expense

A very sharp report that recommended discontinuing the BDE because of a lack of competence in the whole system--the 8(a) firms, the procuring Agencies and the SBA.

Suggested several options: equal distribution of funds; requiring procuring Agencies to do cost and price analysis; greater use of the loan program in lieu of BDE; better training of BDSs; dollar limits.

No statutory authority. It came from the Business Loan Investment Revolving Fund. Began to use in 1971. Total by 1983 was \$83 million to 594 firms on 1334 contracts.

15. FIA Report of FY 1986

The report for 1986 praised the SOP development for 8(a) MSB/CID.

It found two areas needing attention:

- o Exit interviews with clients receiving 7(j) assistance. They would be permitted under revisions to the SOP.
- o Quarterly financial statements by participants. Uneven compliance. Would start annual review and terminate those not complying.

Also reported that better control of accounting and funds control processes were needed under the 8(a) contracts.

APPENDIX C

WEEKLY LISTS OF INTERVIEWS CONDUCTED

Interviews Completed 7/24-7/31/87SBA Contract 2084-ADAMA-87

<u>Date</u>	<u>Name and Organization</u>
7/24/87	Ed Neal, Deputy Director, MSB/COD (Met Assoc Adm. Gonzalez)
7/27/87	Francisco Marrero, Director Program Eligibility, MSB/COD Robert Webber, General Counsel Albert Carter and Deputy Rod Lewis, Director of Program Development MSB/COD
7/28/87	Bernita Kane, Office of Director for Industry Programs (Her superior was absent) See 7/31/87
	Richard Osbourn, Director of Personnel
7/29/87	Richard Shane, Assistant Administrator SBLR
/30/87	Lawrence Rosenbaum, Comptroller Joseph Maas, Assistant Administrator for Administration
	Members of the Office of General Counsel: David Kohler, Tom Williams, William Klein
7/31/87	Charles Gillum, Inspector General and Senior Members of His Staff: for Audit: Ray Randolph, Elden Robertson Clifford Downen, Assistant Administrator, Congressional and Legislative Affairs. Two senior associates: Eileen Posey, Eleanore Ellenens. Joseph Conrad, Director of Private Industry Programs, MSB/COD and Senior Associate Bernita Kane.

TOTAL FOR THE PERIOD: 13 Interviews with
20 Individuals Participating

Interviews Completed 8/3/87-8/7/87SBA Contract 2084-ADAMA-87

<u>Date</u>	<u>Name and Organization</u>
8/3/87	Joseph Montes, Special Assistant to the Administrator Monika Edwards Harrison, Associate Administrator, Office of Procurement Assistance
8/4/87	Walter C. Terry, Small and Disadvantaged Business Utilization Specialist (SADBU) Department of Labor
8/5/87	Director of Program Eligibility and Selected Key Staff Members: Francisco Marrero, Jorge Cordona, Don Gray: Applications, Extensions and Terminations. Joseph Bennett, SADBU of Agency for International Development and former SBA Deputy AA for MSB/COD.
8/6/87	George Robinson, Director Office of Equal Employment Opportunity and Compliance Office of Information Resources Management 8a Specialist John Hightower (with permission of Assistant Admin. Gallogly) Director of Program Development and Selected Key Staff Members: Rod Lewis (Deputy), Roscoe Hines and William Powers: Contract Support, Business Development Expense, and Goals. Deputy Associate Administrator Ed Neal
8/7/87	Gene Rosen, SADBU, National Aeronautics and Space Administration Ample Bouchet, SADBU, Department of Transportation

TOTAL FOR THE WEEK: 11 Interviews. 16 Individuals Participating

Interviews Completed 8/10/87--8/14/87SBA Contract 2084-ADAMA-87

<u>Date</u>	<u>Name and Organization</u>
8/10/87	John Wynn, SADBUD, GSA (and two associates) Conducted by Tom Morris and Fred Neuman
8/11/87	Margie Wilson, SADBUD, EPA (Morris and Neuman) Dan Gill, SADBUD, Army (Morris and Neuman)
8/12/87	Willie Boyd, Deputy SADBUD, MHS and Deputy Assistant Secretary Henry Kirchenmann Martin Techler, Deputy General Counsel Subject: Task Force on MBDA Transfer
8/13/87	Ray Dellas, SADBUD, Defense Logistics Agency and Shirley Downes Defense Fuel Supply Agency Carlos Ruiz, Acting SADBUD, Veterans Administration and members of his staff Al Burman, Deputy Administrator, Office of Federal Procurement Policy and Susan Tanaka OMB Budget Examiner for SBA
8/14/87	Debra Saunderman, SADBUD, Treasury Department John Franke, Asst. Secy. of Agriculture and Two Key Associates: Don Hanna, Procurement; and Casey Mann, SADBUD, Dept. of Agriculture.

TOTAL FOR THE WEEK: 10 Interviews. 15 Key
Individuals Participating.

Interviews Completed 8/17/87--8/21/87

(SBA Contract 2084-ADAMA-87)

<u>Date</u>	<u>Name and Organization</u>
8/17/87	Robert Miller, Philadelphia R.O., RA Accompanied by his Deputy Mr. Wilkin, and ARA Ms. Ellis. (Morris and Neuman)
	Carole Scheck, Philadelphia District, Deputy DD Accompanied by Supv. BOS Mr. Collins. (Morris & Neuman)
8/18/87	Janice Wolfe, Washington DC District Office, DD (Morris and Neuman). Revisits Planned. Meeting of Federal Administrative Management Assn. to Hear Discussion of 8a Program by Ms. Wolfe, and a Case Study of a Successful Graduate.
8/19/87	Catherine Marschall, Richmond District Office, DD Accompanied by Supv BOS Mr. Mitchell
8/20/87	Howard Messner, Executive Vice President, American Consulting Engineers Council. (Messner is former Federal Official and Member of NAPA) (Revisit Planned With Selected Members).
8/21/87	Mr. John Cox, Associate Administrator, Office of Business Development Joseph Kernan, Office of Natural Resources Sales Former MSB Official Joseph Mass, Revisit to Discuss Annapolis Conference Held by AA Gonzales.

TOTAL FOR THE WEEK: 9 Interviews. 13 Key
Individuals Participating.

Total Interviews: 8 -- With Exposure to/to the Views of 20 SBA Officials and 10 External Officials.

NAPA Study Activities 8/31/87--9/4/87

<u>Date</u>	<u>Activities</u>
8/31/87	June Nichols, Regional Administrator, Region IV Wiley Messick, Deputy RA, Region IV Isaiah Washington, ARA/MSB&COD, Region IV Wilfred Stone, District Director, Atlanta John Jones, Acting Deputy DD, Atlanta Laura Graham, Supervisory BOS, DO Atlanta
9/1/87	Douglas McAllister, District Director, Jacksonville Herschel Jackson, Supervisory BOS, DO, Jacksonville
9/2/87	Planning and Analysis. Profile Review of Jacksonville District
9/3/87	Consultation with Mr. Neuman Regarding His On-Going Revisit to the Washington, D.C. District Office D.C. Revisits with Howard Harding, Melvyn Goodman, Mary Thomas
9/4/87	Edwin Holloway, Associate Administrator for Finance & Investment Meeting with Selected Members of the American Consulting Engineers Council (One of Two Planned Discussions). Four officials Met. Call from the Government Executive Magazine Regarding the Study and Names of NAPA Panel. Read Them Copy of the SBA Press Release.

Total Interviews: 11 -- With Exposure to the
Views of 13 Officials (9 SBA).

Interviews Completed 9/7/87--9/11/87

<u>Date</u>	<u>Name and Organization</u>
9/7/87	Work at Office and Travel to Chicago
9/8/87	Region V, Chicago --James Thompson, R.O., RA --James Charney, R.O., Deputy RA --Robert Kyler, ARA MSB/COD --John Smith, D.O., DD --Tony McMahon, D.O., Deputy DD Chicago District Office --Howard Norris, Supervisory BOS --Vivian Abraham, Contract Negotiator --Leonard Harbin, BOS --Fernando Pineda, BOS/Financial Analyst
9/9/87	Detroit District Office --Raymond Harshman, D.O., DD --Conrad Valle, D.O., Supervisory BOS --Israel Miller, BOS
9/10/87	Central Office --Wilfredo Gonzalez, AA MSB/COD --Joseph Conrad, Director Private Industry Programs --Milton Wilson, Assistant to Mr. Conrad
9/11/87	American Consulting Engineers Council Second of Two Roundtables with Council Members Central Office --Edward Neal, Deputy AA MSB/COD

Total of Nine Interviews and 19 Officials

Interviews Completed 9/14-9/19/87
 NAPA SBA Study. Contract 2084-ADAMA-81

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<u>Date</u>	<u>Name and Organization</u>
9/13/87	Depart Washington for San Francisco at noon.
9/14/87	Steven Bangs, ARA Region IX, and Acting RA Michael Howland, San Francisco D.O., DD P. Chann, Supv. BOS, San Francisco D.O.
9/15/87	Hawley Smith, Los Angeles D.O., DD M. Shelton, Los Angeles D.O., ADD James Gordon, Los Angeles D.O., Deputy DD G. Constantino, Los Angeles, Contract Development Specialist
9/16-17	Return to Washington for analysis and planning
9/18/87	Confer with NAPA Panel Member, Ed Rhodes, former Director of Procurement for HEW and EPA Confer with Panel Member Jerry Fox, former official of NASA and GSA and one time officer of an 8a Firm.
9/19/87	Owen Birnbaum, Consultant, and former Small Business Specialist in the Office of Federal Procurement Policy

Total of 11 Interviews Conducted.

Future Schedule Covering Visits to New York, Newark, Dallas
 and San Antonio Remains Unchanged.

Tom Morris
 Project Director

Interviews Completed 9/21/87--9/25/87
 NAPA SBA Study. Contract 2084-ADAMA-81

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<u>Date</u>	<u>Name and Organization</u>
9/21/87	Revisit with Mr. Richard Osbourn, Director of Personnel Revisit with Mr. Lawrence Rosenbaum, Comptroller
9/22/87	Initial Visit with Mr. Jeff Weiss, new Office-Director Designate of "Management and Technical Assistance"
9/23/87	Dean Stanton, Deputy Director of the former Office of Private Industry Programs
9/24/87	*Aubrey Rogers, Deputy Regional Administrator, Region II Edric Rose, Assistant Regional Administrator, Region I for MSB/COD Bert Haggerty, District Director, New York District Office Luke Moore, Superv BOS and Acting ADD, New York District Office
9/25/87	*Michael McHale, Assistant District Director, MSB/COD, Newark District Office Hector Villeneuve, Supervisory BOS for Manufacturing, Newark District Office

*Regional Administrator and District Director were on holiday leave.

Total of 10 Interviews

Schedule covering meeting with NAPA Panel on Thursday
 October 1, with Dr. Prendergast if available on Friday
 October 2, and to the Dallas and San Antonio Officers
 on October 5 and 6 remains unchanged.

Report No. 10

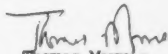
Activities During Week of 9/28/87--10/2/87NAPA SEA Study. Contract 2084-ADAMA-81

<u>Date</u>	<u>Activities</u>
9/28/87	Prepare for meeting of NAPA Panel. Interview with Mr. Jeff Weiss, new Director of Management and Technical Assistance
9/29/87	Prepare for Panel Meeting
9/30/87	Briefing of Dr. Prendergast and his Deputy Mr. Savage on discussion agenda for the NAPA Panel Briefing of Mr. Ray Kline, NAPA President, on the discussion agenda for the NAPA Panel
10/1/87	Four hour meeting of the NAPA Panel. See Agenda attached. Ms. Janice Wolfe joined for a working lunch to discuss her perspectives from the Regional and District levels.
10/2/87	Work on Progress Report for Mr. Moffitt Presentation to Mr. Moffitt of the NAPA Panel Agenda
10/3/87	Work on Progress Report for Mr. Moffitt

Report No. 11

Activities During the Week of 10/5/87--10/10/87
and Planned for the Following Week
 (NAPA SBA Study. Contract 2084-ADAMA-81)

<u>Date</u>	<u>Activities</u>
10/4/87	Work on Progress Report for Mr. Moffitt
10/5/87	Completed and Delivered Progress Report to Mr. Moffitt with Copies Limited to Dr. Prendergast and Cathy Thomas
10/6/87	During the Week Contacts Were Made With Knowledgeable Individuals Recommended by the NAPA Panel and Others: --Dr. James Krause, University of Southern California --Ms. Karen Hastie Williams, Attorney and Former Director of Office of Federal Procurement Policy --Mr. Barry Shillito, Attorney and Former Employee of SBA Where He Had Contact With the MSB Program --Ms. Andrea Fisher, Detroit Attorney, and Former Director of Acquisition Policy, Department of Defense --Mr. Howard Woods, Retired Executive and Member of the National Advisory Committee to the SBA Administrator --Mr. John Werner, Director, Office of Investment, SBA. Discussed the MESBIC Program.
10/7/87	Began Work on Final Report. Attended MedWeek Seminar.
10/8/87	Attended the Monthly Meeting of the Procurement Round Table.
10/9/87	Work on Final Report
10/10/87	Work on Final Report
10/12/87	Planned: Work on Final Report
10/13/87	Planned: Visit to Region VI to Continue Through 10/15/87. Will Sit In on Regional ADD Meeting for Part of This Time.
10/16/87	Work on Final Report
10/11/87	Work on Final Report
10/18/87	Work on Final Report


 Thomas Morris
 Project Director

Report No. 12

Interviews Completed Week of 10/12/87 to 10/17/87

NAPA SBA Study, Contract 2084-ADAMA-81

<u>Date</u>	<u>Activities</u>
10/11/87	Work on Final Report
10/12/87	Work on Final Report
10/13/87	Joe Luna, ARA MSB/COD, Region VI Joe Pena, RA, Region VI
10/14/87	Cleo Styron, Chief of Procurement Assistance, Region VI E.C. Coffee, Chief of 8(a) Program, Region VI Kenneth Struble, ARA Business Development, Region VI Alexander Lavan, Chief of 7(j) Program, Region VI Ralph Murillo, ADD MSB/COD, San Antonio (Telephone) Jesse Quigley, ARA Procurement Assistance, Region VI Ella Bangs, Supervisory BOS, Dallas District
10/15/87	Frank Flato, Regional Counsel, Region VI
10/16/87	Work on Final Report
10/17/87	Work on Final Report

TOTAL OF 10 INTERVIEWS

Thomas D. Morris
Project Director

APPENDIX D

ESTABLISHMENT OF PANEL TO OVERSEE THE NAPA STUDY



National Academy of Public Administration
Chartered by Congress

Appendix D
Page 1 of 2

July 22, 1987

TO: Prospective Members of the Panel to Oversee NAPA Study of the
Management of the SBA Minority Business Program

FROM: Ray Kline, President *Ray Kline*

SUBJECT: Status Report

We have submitted a formal proposal to the Associate Deputy Administrator calling for a four-month study to cover the functions, organization and staffing of:

Headquarters of the Program
Selected Regional and District Offices
Selected Procuring Agencies
Both Washington, D.C. and selected field. Probably candidates are DOD, DOT, NASA, VA, GSA.

Due to the high visibility of the program, and the urgency the Administrator sees in making reforms, we expect to move expeditiously as soon as the arrangement is concluded.

We expect to have meetings of the Panel on:

August 28, from 11 a.m. - 2 p.m.
October 2, from 10 a.m. - 2 p.m.
November 13, from 9 a.m. - 3 p.m.

If all goes well, our draft report would be in your hands for comment about December 7, 1987. Each member would receive an honorarium of \$150 per meeting attended.

Tom Morris will work on the project full time, with part time assistance from Mr. Fred Neuman, former Director of DCAA and now a consultant to Peat, Marwick, Main & Co.

Tom will welcome individual members of the Panel joining on visits to Regions and Districts, and will talk with those interested about possible schedules. No more than one member would accompany Tom on a trip.

The prospective members of the Panel to whom this letter is being sent are:

Chairman, Mr. Ray Kline, President of NAPA
Mr. Donald Sowle, consultant and former Administrator of OFPP
Mr. Robert Moot, consultant, and former ASD (Comptroller) of DOD, former Administrator of SBA.
Mr. Ed Rhodes, Director of Purchases for METRO, and long -time Federal official including OPM, HEW and EPA.
Mr. Paul Dembling, attorney, former General Counsel of GAO
Mr. Frank Sanders, consultant and former Under Secretary of Navy and former Staff Director of House Appropriations Committee
Dr. John Magnotti, Director Procurement Program, American University, and former industry official.

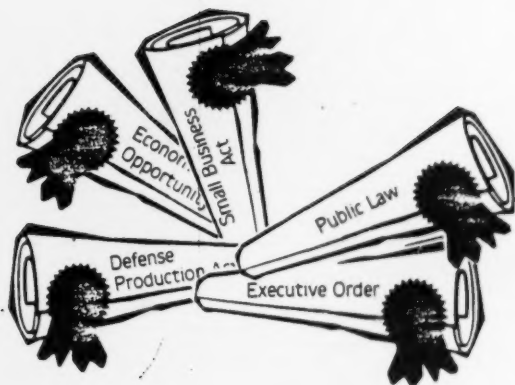
Key members of the NAPA staff who will meet with the Panel are Jerry Fox; Tom Morris, (Project Director); Mort Cohen (Chief Financial Officer); and Fred Neuman (consultant to the project).

We will keep you informed as soon as there are further developments.

SBA-Status/TTT
07/22/87

APPENDIX E

HISTORY OF THE 8(A) PROGRAM BY
DR. JOHN F. MAGNOTTI, JR., A PANEL MEMBER



On December 22, 1983, the Small Business Administration (SBA) proposed changes in the rules for administering the program designed to assist small businesses owned by socially and economically disadvantaged persons — the 8(a) program. The proposed rules, later published as final rules, were the culmination of an emotional struggle which has plagued the program since its inception. Both applauded and condemned, the program has lurched fitfully from funding feast to funding famine through the past 16 years.

From a philosophical viewpoint, the program suffers from the same attitudes and opinions affecting the other collateral policies imbedded in the federal procurement process. Generally, collateral policies are designed to provide the taxpaying public with more bang for the procurement buck in attaining economic and social goals included in the national objectives. Unfortunately, collateral policies in federal procurement are used in many cases at the expense of efficient contract performance and reasonable cost.

The Small Business Administration's 8(a) Program Part One — A Legislative History

by John F. Magnotti, Jr.

A phenomenon peculiar to government is the tendency to use a club rather than honey. Experience has shown that business usually reacts favorably to almost any rational program as long as it provides incentives which either financially or in some other way support and further the legitimate objectives of the firm. The legislation relating to minority business essentially is punitive insofar as the nondisadvantaged businessman is concerned, and provides no real incentives for compliance or support.

The results are less-than-enthusiastic compliance with collateral policies and statutes on the part of both federal procurement officials and the majority of government contractors, and debilitating political manipulation as one group or the other attempts either to increase or deny the use of public funds.

In a series of reports, the General Accounting Office (GAO) responded to congressional concern about the effectiveness of the program by finding generally that the program is not meeting its objectives. The titles of three of the reports capture the critical attitude of the GAO toward the SBA's management of the 8(a) program: *The SBA 8(a) Procurement Program — A Promise Unfulfilled*, April 8, 1981, CED-81-55; *Misuse of SBA's 8(a) Program Increased Cost for Many ADP Equipment Acquisitions*, October 16, 1981, AFMD-82-9; and *Proposals for Minimizing the Impact of the 8(a) Program on Defense Procurement*, October 12, 1982, GAO/PLRD-83-4. Another report on a peripheral program, *SBA's Tip Management Assistance Program: Changes Needed to Improve Efficiency and Effectiveness*, September 29, 1981, CED-81-149, also cited serious deficiencies in the 8(a) program.

The question that remains largely unanswered is whether the program is assisting the minority community or a relatively few minority entrepreneurs who have demonstrated a capability for competing effectively in the government market with or without government subsidies or assistance.

Origin

The genesis of the 8(a) program is found in Public Law 603, June 11,

1942, 77th Congress (S. 2250), which created the Smaller War Plants Corporation with broad authority to contract with the United States to furnish articles, equipment, supplies, or materials to the government, and to arrange for the performance of these contracts by letting subcontracts "as the Corporation may deem appropriate . . ." to small business concerns or others as necessary to enable the corporation to perform these contracts. The law specified that if the Smaller War Plants Corporation was certified as competent to perform any specific government contract, it had the right to receive the contract coupled with extensive subcontracting authority.

The Defense Production Act Amendments of 1951, Public Law 96, July 31, 1951, 82nd Congress (S. 1717), created the independent Small Defense Plants Administration at section 110(a) by adding to the Defense Production Act a new section, 714 (50 U.S.C. App. Sec. 2163(a)). Section 714 also provided broad authority "without regard to any other provision of law . . ." to enter into contracts with the United States and to arrange for the performance of the contracts by letting subcontracts to small business concerns or others.

The first small business act, the Small Business Act of 1953, Title II of Public Law 163, July 30, 1953, 83rd Congress (H.R. 5141), dissolved the Reconstruction Finance Corporation and created a Small Business Administration subject to a two-year sunset provision.

The new agency lacked the authority of its predecessors to "contract without regard to any other provision of law . . ." but did have the authority to contract with the United States and to arrange for the performance of these contracts by negotiating or otherwise letting subcontracts to small business concerns or others without competition.

The second Small Business Act, Public Law 85-536, July 18, 1958 (H.R. 7963), established a permanent agency with traditional contracting authority. Section 8(a) allowed the Small Business Administration to act on behalf of small business by contracting with the United States and arranging for the performance of these contracts by negotiating or otherwise letting subcontracts to small business concerns or

others. The authority in Section 8(a) applied to all small businesses.

The power of the SBA to contract with other agencies was essentially unused. The racial turbulence of the 60s, however, brought about increased social consciousness and the Economic Opportunity Act of 1964, as amended in 1967, directed attention to labor surplus areas and to small business concerns owned by economically disadvantaged individuals. At the same time, there was increasing pressure in Congress to use the authority granted under the Small Business Act of 1958 for the SBA to contract with other government agencies and subcontract to small businesses. The Senate Select Committee on small business, for example, reported that the 8(a) program was so far of limited use and in need of reform.

The reform was initiated by a series of Presidential Executive Orders (EOs). The first of these, EO 11458, March 1969, created machinery for developing and coordinating a national program for minority business enterprise and established an Advisory Council for Minority Enterprises. The second, EO 11518, March 1970, required the SBA to represent the interests of the small business community with 11 federal agencies, particularly those firms owned and controlled by minorities.

The third, EO 11625, (October 1971) first stated the term "minority business enterprise" and defined these organizations nonracially as business enterprises owned or controlled by one or more socially or economically disadvantaged or deprived persons. The order stated that the disadvantages might arise from cultural, racial, background, or chronic economic circumstances, as defined by the SBA. The program operated under the executive orders until it was structured as a major congressional initiative in Public Law 95-507 (H.R. 11318), which was signed into law on October 24, 1978. Hailed as "landmark legislation to increase the small and minority share of the federal procurement dollar," the bill has not lived up to expectations.

The New 8(a) Program

Public Law 95-507 mandated a two-pronged approach to assist disadvan-

taged businesses. First, it provided statutory authority to require prime contractors to subcontract to small businesses. More important, however, it was the congressional blueprint for a comprehensive Minority Small Business Capital Ownership Development program having as its cornerstone an 8(a) program designed to foster business ownership by socially and economically disadvantaged individuals, promote the competitive viability of these firms by providing the necessary contracts and financial, technical, and management assistance, and clarify and expand the United States program for procurement from small business concerns owned by socially and economically disadvantaged individuals.

The revitalized program continues to reflect the concept originally enunciated in the Smaller War Plants Corporation Act by empowering the SBA to enter into contracts with the United States government and to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns. If the SBA certifies ability to perform a contract, the procuring authority is authorized in its discretion to let the procurement contract to the SBA upon any terms and conditions that may be agreed upon by the SBA and the procurement officer.

SBA regulations were substantively amended to reflect the requirements of the new statute, and section 8(a) authority can now be used only in the context of the Capital Ownership Development Program (CODP). For the Congress, however, the CODP was but one of several tools available to the SBA to promote the competitiveness of disadvantaged firms and can be used only if other resources needed to develop the firm are available. In the words of Congress, the other resources are the management, technical and financial assistance needed to achieve predetermined business plan goals, objectives and targets designed to overcome the firm's status as "economically disadvantaged."

Since 1981, the program has been under close and continuous scrutiny. In a report cited previously, *The SBA*

8(a) Procurement Program — A Promise Unfulfilled, the GAO noted that "The program's problems have been known for years. Criticism, mostly justified, has come from many sources, yet meaningful corrective action has not been taken. Decisions about the future of the program must be made."

In a hearing report on the program published in December 1982, *Minority Business Development Efforts of the Small Business Administration*, Committee on Small Business, House of Representatives, the Congress admitted that "The 8(a) program has been the subject of intensive criticism throughout the years. The report also noted the SBA's historic "failure to recognize publicly many of the more positive and productive aspects of the program."

Congressional optimism about the future of the program was expressed in the same report in testimony by John Hall, president, Mark Battle Associates, itself an 8(a) contractor. Mr. Hall cited the only study of which the Congress was aware which empirically supported the premise that the 8(a) program has been generally effective in accomplishing its statutory objective. After listing a variety of reasons for program effectiveness, Mr. Hall concluded:

"Based on the type of development needs which exist in minority communities, particularly the absence of sizable programs that help minority entrepreneurs (emphasis added) gain valuable management experience, it comes clear that the 8(a) program is the most effective federal mechanism developed to date to increase the market share on viable participation of minority Americans in the U.S. economic mainstream."

Despite this optimism, the 8(a) program continues to be a target for criticism. Donald P. Young, for example, in an article in the *New England Law Review*, Vol. 18 (1982-1983), stated, "The SBA all but ignored the mandate of Pub. L. 95-507 and continued to consider only a few select groups for its contract awards. Achievement of short term goals was all-important, while the objective of the program, business development, became only a secondary consideration."

The expressed hostility of non-8(a)

firms, along with the GAO reports, triggered an almost immediate reaction from the Reagan Administration early in 1981 at a time when all programs dealing with "social engineering" were being examined closely. Admission to the program was frozen, and the SBA proposed that audits of firms in the program be increased.

The objectives of these actions were 1) to determine the effectiveness of the program, 2) to discover whether ineligible firms were participating, and 3) to develop specific rules regarding graduation from the program.

While developing new rules for program implementation, the SBA directed that all firms currently in the 8(a) program be reviewed for compliance with size standards promulgated by the Administration. As a result of the review, 25 firms were found to be other than small. Immediately challenged, the decision to review for compliance with size standards was upheld by the courts and by the GAO.

To avert potential catastrophe by abruptly suspending contractual assistance to the larger firms in the program, the administrator of the SBA published an Interim Emergency Rule which established new size standards for the present participants in the 8(a) program and provided for a six-month grace period. Under the rule, participants were required to have an average net worth of not more than \$4 million and an average net income after taxes for the preceding two fiscal years of not more than \$1 million. The rule also provided that where the SBA discovers that a firm no longer meets the eligibility requirements, it is barred from contract support until the deficiency is corrected. With regard to this latter point, however, the general counsel of the SBA advised that at least minimal standards of due process had to be applied prior to contract support termination.

At the end of the six-month period, the SBA suspended 21 firms as no longer being eligible for contractual assistance under the 8(a) program. It was also noted that the 21 firms involved had been in the program for an average of 10 years and had obtained about \$750 million in 8(a) awards, an average of about \$36 million in contractual support for the 10 years or about \$3.6 million each year for each firm. The support provided

the 21 firms represents about five percent of the total contractual support provided since the beginning of the program, while the 21 firms represent about 05 percent of the firms accepted in the program since inception.

On December 22, 1983, the SBA published proposed changes to revise and amend regulations implementing the 8(a) and 7(j) programs. The most important changes are represented by the following requirements:

(1) That the 8(a) firm must meet the small business size standard for the industry classification for each contract in which it participates.

(2) That the firm can receive contract support only for contracts in those industry classifications in which it was admitted to the program.

(3) That a firm admitted to the program be owned by a person who is both socially and economically disadvantaged.

(4) That if a firm is partially owned by nondisadvantaged individuals, these individuals may not be the former employer of the disadvantaged person, may not be affiliated with another business of the same type, may not hold an excessive interest in the 8(a) firm concerned, may not have negative control over the 8(a) firm, or may not receive excessive compensation for personal services.

(5) That the day-to-day control of the firm lie with the disadvantaged individual.

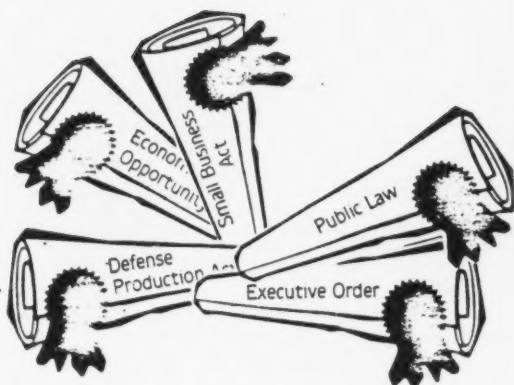
(6) That each firm accepted into the program negotiate a set term for participation which cannot initially exceed five years and cannot be extended beyond an additional two years, and

(7) That a written determination be made that acceptance of a contract for a particular 8(a) firm will not have an adverse impact on the firm.

Part Two of this article, to be published in the *May Contract Management*, will consist of an analysis of the 8(a) application process, thumbnail descriptions of cases in operation, and concluding remarks.

ABOUT THE AUTHOR

John F. Hagmann, Washington, D.C., Chapter 10, is director of the Procurement Management Program, Argosy College of Business Administration, American University, and secretary of the Procurement Roundtable.



The legislative background of the 8(a) program has set in place extensive criteria for determining eligibility under the program. A pamphlet published in April 1983 titled *Programs for Socially and Economically Disadvantaged Persons*, GPO:1983 0-404-188, generally outlines these requirements. To be eligible to participate, small business concerns must be at least 51 percent owned, controlled, and operated daily by one or more socially and (emphasis added) economically disadvantaged persons. Economically disadvantaged persons are defined as those "socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities."

Black Americans, Native Americans, Hispanic Americans, Asian Pacific Americans, and Asian Indian Americans are "officially designated socially disadvantaged." Members of other groups

The Small Business Administration's 8(a) Program

Part Two — The 8(a) Program

by John F. Magnotti, Jr.

are constrained to show proof of social disadvantage, and economic disadvantage must be established for all applicants. Statistics on the program, however, are maintained in the following ethnic categories: Black, Puerto Rican, American Indian, Spanish Speaking, Asian, Eskimo/Aleut, Undetermined, and Other.

Recent SBA data show the 8(a) portfolio as of September 1984 to include 2,661 contracts totaling \$41.2 million. Of the total contracts, Black-owned firms hold 1,536 or 57.7 percent. Spanish Speaking-owned firms, not including Puerto Rican, account for 566 contracts or 21.27 percent, and the Asian group accounts for 258 contracts or 9.69 percent. Of the other groups, American Indians account for 155 contracts or 5.8 percent, Puerto Ricans for 84 contracts or 3.2 percent, Eskimo/Aleut five contracts or .18 percent, Undetermined three contracts or .11 percent, and Other 54 contracts or 2.02 percent.

Applying

Typically, the 8(a) applicant must first attend an extensive briefing before he submits an application in the federal district in which he expects to do business. The application process features a Business Plan which is defined by the SBA as "a comprehensive planning document which clearly describes the business development objectives of the applicant concern and what, how, and where the resources to foster or expand its capabilities to participate in the economy as a self-sustaining profit-oriented small business will be obtained and utilized."

Plans have been criticized for not containing detailed descriptions of why the firm is economically disadvantaged, what objectives must be achieved for the firm to succeed, or a step-by-step procedure to be followed to overcome any deficiencies. In the words of one applicant being advised by a SBA official, the business plan must give the impression of a "bird with a broken wing" in order to receive a sympathetic hearing.

The evaluation process takes three to five weeks for completion, assuming that no mistakes are found. If the initial application is approved, the candidate

contractor then has 90 days in which to submit the business plan. Business plans are reviewed by the District Office, Regional Office, and finally by the Central Office in Washington. If the business plan is found to be adequate, it is routed to the Business Development Specialist for processing.

There apparently is no systematic approach to determining support requirements. SBA officials use a process called the Requirements Availability Determination (RAD) to judge whether the agency is able to obtain sufficient contract support for a firm seeking 8(a) approval. One minority contractor, Dennis Brownlee, president of Advance, Inc., expressed this view:

"Inappropriate RAD decisions have had a devastating impact on the 8(a) program in the past, and were the result of 'best judgments' made by Office of Program Acquisition (OPA) officials who had no data or quantitative analysis on which to base their decisions. These decisions are directly reflected in the performance of the program in generating an overabundance of contract support for a few 8(a) firms and no support for many others."

Exiting

A major concern to all parties involved is the means by which firms exit from the 8(a) program. In a 1982 report by the Committee on Small Business of the House of Representatives, it was noted that there were four means by which firms can exit:

- 1) Conclusion of the firm's Fixed Program Participation Term (FPPT) or any extension thereof;
- 2) Removal of the firm at its request either by voluntary withdrawal or by execution of a Consent Agreement;
- 3) Program completion prior to conclusion of the FPPT; and
- 4) Program termination prior to conclusion of the FPPT.

Under the proposed rule changes, firms should expect to stay in the program a maximum of seven years.

Exiting, or more properly "graduating," is the source of much controversy. The reaction by the largest firms in the program to the decision by the SBA to first review and then suspend firms that cannot qualify as small businesses is

clear evidence that there is no incentive for firms to leave the program. On the contrary, before the proposed rule change there was strong incentive to remain in the program — the provision by the government of contracts without competition. It remains to be seen whether a definite time limit in the program will create enough incentive for 8(a) firms to seek competition and prepare to move into the open market at the end of the FPPT negotiated under the new rule.

Program Operation

A change frequently made during the life of the program is that it has been of benefit to only a small percentage of the disadvantaged community that it was designed to help. Support for this point of view was provided by a report released in August 1984 by Otis Troup, District of Columbia auditor, in which it was charged that despite the fact that the District agency responsible for sewage treatment consistently had exceeded city goals for awarding contracts to minority firms, only a few firms had benefited from such construction contracts, described as highly lucrative.

It was charged specifically that of \$15.1 million of construction contracts let by the District of Columbia Department of Environmental Services and earmarked for minority firms, \$9.6 million or 64 percent was awarded to one firm, Prince George's Contractors, Inc., of Clinton, Maryland. Another firm, MBE Inc., received 28 percent of the business. The remaining 8 percent was spread among 10 other firms. Troup suggested that the effort to preclude inequities in awarding contracts which discriminated against minority contractors may be creating inequities by permitting a few minority firms to obtain a disproportionate share of the available business.

Another recent example involved a contract let by the Department of Housing and Urban Development (HUD) to another 8(a) contractor, the Washington-based Match Institute. The \$500,000 contract, the second noncompetitive award for a minority training plan in two years, was cancelled by Assistant Secretary June Q. Koch after a report by Inspector General Charles L. Dempsey

that raised questions about the contract.

The first award to the same firm last year was controversial because the award was made after Timothy Jenkins, Match chairman, and 40 other black Republicans met with Secretary Samuel R. Pierce, Jr., to determine how the Reagan administration could channel more contracts to minority enterprise. Although Jenkins was quoted as saying "There's no question about the quality of what we did," Deborah Greenstein, the HUD official who supervised and subsequently opposed the follow-up contract, did so because Match had done "a lousy job" on the first contract.

Pluses and Minuses

Evidence, both subjective and objective, leads to several conclusions regarding the 8(a) program. The first and most obvious conclusion is that Congress generally, and more specifically the House Small Business Committee, has given the 8(a) program priority in the development of the Minority Small Business Capital Ownership Development Program. Additionally, it is clear that minority entrepreneurs are enthusiastic in their support of the program; in fact, selected minority businessmen have been highly successful as a result of their participation.

On the other hand, however, the program has been of benefit to relatively few participants, and, more important, it has been unable to attain its basic objective, that of fostering small business throughout the entire minority community.

No doubt it is difficult to develop competitive disadvantaged firms, particularly in view of the lack of incentive in the original program to graduate. The program has provided some benefits — some firms have been created that would not otherwise have had the resources to go into business, many firms continue in business because of 8(a) program support, and some firms have increased sales and income, resolved bonding problems, and improved credit capabilities. Several firms contend that being certified as an 8(a) con-

tractor has helped them obtain commercial work.

Yet, the manner in which the program has developed has made failure almost inevitable. Most of the effort on the part of the government is directed to increasing the number of contracts rather than finding effective ways to develop minority businesses capable of standing alone in the competitive market. The basic objectives of the program remain skewed, and many administrators and participants are convinced that mere acceptance into the 8(a) program should ensure success.

There seems little doubt that the program has suffered from SBA preoccupation with short-term contract goals and inability to assess the impact of reserving contracts for 8(a) firms previously awarded to other small businesses. Circumstantial evidence and actual data suggest inequities in contract support. In many cases, contracts are awarded as a result of political manipulation rather than enhanced management on the part of SBA officials.

The most important shortcoming, however, is the lack of incentives for the nondisadvantaged business community to support the program. In fact, prime contractors see it as a necessary evil that must be accorded token compliance. Some of the prime contractors involved hope only to take advantage of the program by arranging to use 8(a) firms as "fronts" for set-aside contracts.

Conceptually and philosophically the program has merit, but it has so far been unable to overcome inefficiencies and inequities in the legislation and in program administration. Complete success can be attained only if Congress is able to create incentives for participation in the program by nondisadvantaged businessmen and if the SBA is able to develop an equitable and effective approach to contracting with disadvantaged firms. ■

ABOUT THE AUTHOR

John F. Nagorni (Washington, D.C. Chapter NCMA) is director of the Procurement Management Program, Reginald College of Business Administration, American University, and secretary of the Procurement Roundtable.



Letters to the Editor

In your March 1985 issue of *Contract Management*, I read with mixed feelings a letter from Mr. Henry R. Popell, who is employed in a pricing function in the Air Force Plant Representative Office at the Northrop Corporation. First, I was proud that Mr. Popell, whom I have not met, was proclaiming very forcefully his professionalism. For several years I have been working to fight the OPM denigration of the Air Force contracting community. We seek in all quarters proper recognition of these professionals. The initial step has been the need for the individual to accept personal responsibility to act as a professional and to pursue the education, training, and skills development attendant to assuring professional stature. When Mr. Popell avers his professionalism, that is a positive step. I applaud.

When, on the other hand, he attacks NCMA in emotional language and without cause, Mr. Popell detracts from his own stature and, by association, from the reputation of all contracting personnel. I do not agree with him. Whether Mr. Popell agrees or not, NCMA certification is the premiere institutional measure of government contracting knowledge. We are establishing an extensive career development program within the Air Force for all of our acquisition personnel. I hope

some day we will be permitted to have a certification process within the Air Force, but until we do, we appreciate and support the fine work of NCMA.

James E. Williams, Jr., Deputy Assistant Secretary (Acquisition Management), Department of the Air Force

I wish to make the following comments regarding Mr. Henry R. Popell's comments on CACM/CPDM certification in the March 1985 *Contract Management* column "Speaking Out."

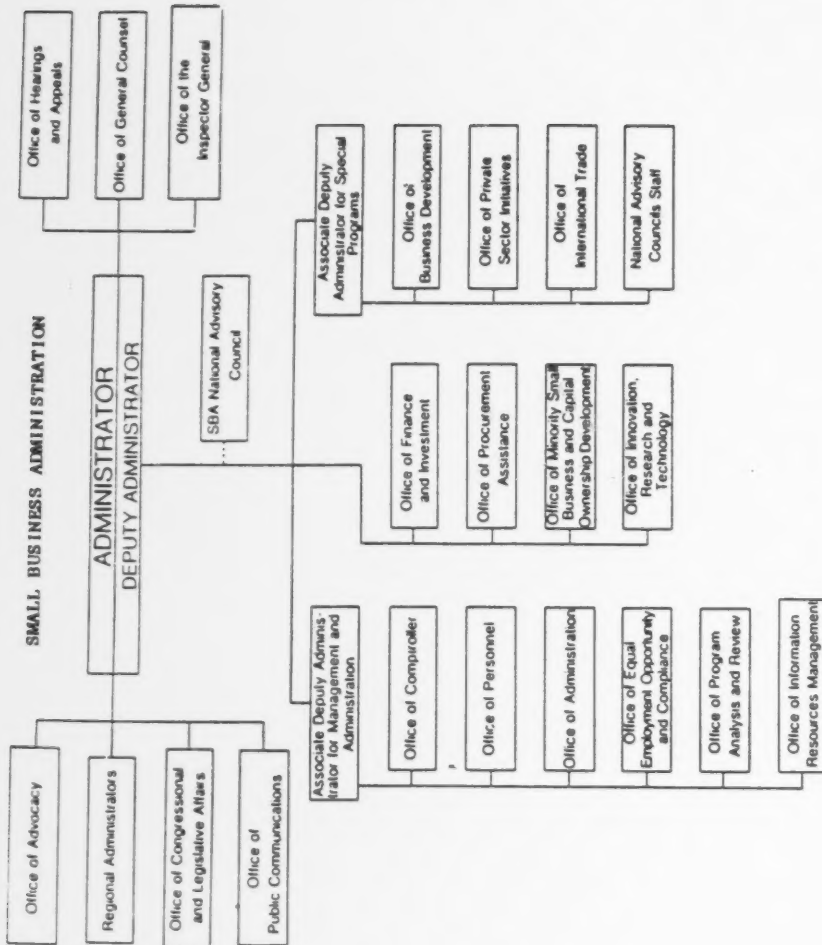
While it is absolutely vital that any person believes in himself and his professional position, another important part of professionalism is the perception others have of the individual's professional abilities (i.e., the public, customers, peers, superiors, etc.). The certification is one tool available to the individual which enhances this perception and supports the self-held image of professionalism to those in and out of the contracts profession who are not familiar with the particular contract professional's abilities.

I trust the certification program will be strengthened over the years to come.

J. L. Martin, Administrator, Government Contracts, AM General Corporation

APPENDIX F

ORGANIZATION CHART OF THE SBA



APPENDIX G

INTERAGENCY AGREEMENT BETWEEN
THE DEPARTMENT OF COMMERCE AND SBA,
DATED MAY 19, 1987

INTERAGENCY AGREEMENT
BETWEEN THE
U.S. MINORITY BUSINESS DEVELOPMENT AGENCY
AND THE
U.S. SMALL BUSINESS ADMINISTRATION

WHEREAS, the establishment of businesses owned by socially and economically disadvantaged individuals, as well as the expansion of small businesses owned by socially and economically disadvantaged individuals, will enhance the economic prosperity of this Nation; and,

WHEREAS, small socially and economically disadvantaged minority businesses suffer institutional and other barriers in gaining access to the business mainstream; and,

WHEREAS, the Minority Business Development Agency (MBDA), under the authority of Executive Order 11625, issued October 13, 1971, provides financial and marketing assistance to public and private organizations so that they can provide technical and management assistance to facilitate the development and expansion of socially and economically disadvantaged businesses; and,

WHEREAS, MBDA coordinates the programs and operations of the Federal Government which affect or may contribute to the establishment, preservation, and strengthening of socially and economically disadvantaged minority businesses; and,

WHEREAS, the U.S. Small Business Administration (SBA) pursuant to the Small Business Act of 1958, as amended, is authorized to assist small businesses and small business concerns owned by individuals who have been determined to be socially and economically disadvantaged by providing financial, technical, management, and marketing assistance, as may be necessary; and,

WHEREAS, the U.S. Small Business Administration is authorized to operate an 8(a) business development program in which SBA contracts directly with Federal Government agencies for goods and services and subcontracts the requirements to small socially and economically disadvantaged businesses; and,

WHEREAS, the regional and field offices and activities of MBDA and SBA shall, to the fullest extent practicable and permissible by law, and subject to the availability of funds, coordinate their program activities and conduct joint projects, with a view toward conserving Government resources without duplication of efforts, for socially and economically disadvantaged minority small businesses.

NOW, THEREFORE, it is hereby understood and agreed that to the fullest extent authorized by statute, regulations and executive orders, and whenever it is feasible and practicable, MBDA and SBA hereby mutually pledge, subject to the availability of funds, the cooperative use of their resources, talents, and facilities in furtherance of providing effective and efficient assistance to the socially and economically disadvantaged minority small business community.

NOW, THEREFORE, MBDA and SBA agree to perform the following:

2

MBDA

1. Assist SBA 8(a) minority program applicants in the completion of the necessary forms for the purpose of applying for certification in SBA's Business Development Program after positive contract support has been determined via SBA Form 1017.
2. Provide management, technical, and marketing assistance and financial counseling to 8(a) minority firms through MBDA-funded organizations on an as needed basis during their participation in the program.
3. Participate, as appropriate, in joint efforts with SBA during 8(a) firms transitioning years in the 8(a) Business Development Program to provide marketing assistance in non-8(a) markets.
4. Upon request, continue to assist socially and economically disadvantaged minority 8(a) firms after they have completed their participation in the 8(a) Business Development Program.
5. Provide SBA, to the extent practicable, an updated listing of minority businesses contained in MBDA's PROFILE System to be used in support of SBA's Procurement Automated Source System (PASS).
6. Develop and implement a reporting system that provides management information for the purpose of monitoring the assistance provided under the Agreement.

SBA

1. Provide, as appropriate financial, management, technical and marketing assistance to 8(a) firms through its various resources, e.g., SCORE/ACE, 7(j), Small Business Institute (SBI), Small Business Development Centers (SBDC), and the PASS System.
2. Participate, as appropriate, in joint efforts with MBDA during 8(a) firms' transitioning years in the 8(a) program to provide marketing assistance in non-8(a) markets.
3. Provide MBDA, as appropriate, with current lists of those firms to be assisted through MBDA efforts at least sixty (60) days prior to entering the transitioning years.
4. Continue to provide financial, management, marketing and technical assistance, as appropriate, to qualified businesses that remain eligible for SBA programs after completion of the 8(a) business development program.

3

5. Provide, to the extent practicable, an updated listing of socially and economically disadvantaged small business firms contained in SBA's Procurement Automated Source System (PASS) to be used in support of MBDA's PROFILE System.
6. Develop and implement a reporting system that provides management information for the purpose of monitoring the assistance provided under the Agreement.

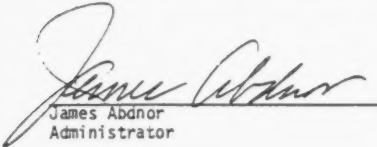
To achieve the above, MBDA and SBA shall, within 30 days after execution of this Agreement, disseminate copies of this Agreement to their respective field organizations.

Nothing in this Agreement shall be construed in any way to authorize any action of variance to existing statute, regulations, or executive orders.

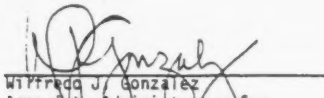
This agreement is effective as of the date shown and shall remain in full force unless terminated by one or both parties. If the termination of this Agreement is to be done unilaterally, the terminating party shall provide the other party with notice of the planned termination at least 90 days prior to the effective date of any such termination.

For the
U.S. SMALL BUSINESS ADMINISTRATION

For the
U.S. DEPARTMENT OF COMMERCE


James Abdnor
Administrator


Malcolm Baldrige
Secretary of Commerce


Wilfredo J. Gonzalez
Associate Administrator for
Minority Small Business and
Capital Ownership Development


James H. Richardson
Director
Minority Business Development
Agency

EFFECTIVE DATE: May 19, 1987

APPENDIX H

FACT SHEETS ON THE 8(A) AND 7(J) PROGRAMS

PUBLISHED BY SBA

FACT SHEET NO. 20

U.S. Small Business Administration

DEVELOPMENT ASSISTANCE 7(j) PROGRAM**THE PROGRAM**

Under the Development Assistance 7(j) Program, SBA is authorized to place grants, agreements and contracts with qualified individuals, profit-making firms, state and local governments, educational institutions, Indian tribes and other nonprofit institutions, in order to provide management and technical aid to SBA clients and small businesses in areas of high unemployment who meet the eligibility requirements of Sections 7(i) and 7(j) of the Small Business Act, as amended in 1978. It also allows SBA to initiate, organize and maintain this management counseling service for small firms as required.

Development assistance available to small firms includes bookkeeping and accounting services, production, engineering and technical advice, feasibility studies, marketing analyses and advertising expertise, limited legal services and specialized management training. Many of these services are free.

ELIGIBILITY TO RECEIVE ASSISTANCE

In general, eligible recipients include SBA's 8(a) certified firms, socially and/or economically disadvantaged individuals and/or firms and individuals or firms located in areas of high unemployment.

HOW TO APPLY TO RECEIVE ASSISTANCE

Individuals interested in receiving technical or management assistance should contact the nearest SBA office and ask for SBA Form 641, "Request for Counseling." The information requested on the form will provide SBA with basic information on the individual and his/her business.

HOW TO APPLY TO PROVIDE ASSISTANCE**Competitive Awards**

Individuals or firms can respond to an announcement or Request for Proposal (RFP) by submitting: (1) a detailed description and biographical data of the staff to be assigned to the project; (2) a biographical history of the project's director showing his experience in developing and supervising contracts; (3) a list of clients for the present and past year with specific examples of work performed and results; and (4) a history of the business' dealing with small firms, specifying those owned and controlled or operated by socially and/or disadvantaged low-income persons, especially firms located in urban or rural areas with high unemployment, and (5) any other information listed in the announcement.

Unsolicited Proposals

Those individuals or firms with innovative concepts which they believe will provide certain unique methods for assisting minority business development may submit unsolicited proposals in accordance with procedures listed in Subpart 15.5 "Unsolicited Proposals" in the Federal Acquisition Regulations.

1. National Concerns

Persons submitting unsolicited proposals with a national scope should forward the concept to the 7(j) Program Manager, Small Business Administration, 1441 L Street, N.W., Room 602, Washington, D.C. 20416; (202) 653-6475.

2. Regional Concerns

Persons submitting unsolicited proposals to be conducted in a specific geographical area should forward the concept to the appropriate SBA regional administrator.

NOTE: Prior to devoting effort or resources to these types of proposals, contact either the 7(j) program manager for national concerns or the assistance regional administrator for minority small business and capital ownership development in the appropriate SBA regional office for regional concerns.

QUALIFICATIONS FOR A CONSULTANT

Professional consulting firms must meet the standards set out in the management and technical assistance program announcement. Potential consultants must have been in business for at least one year before the closing date for receipt of proposals and have a staff capacity to perform at least 50 percent of the work.

ADDITIONAL INFORMATION

To be considered as a prime supplier, the individual, organization or firm can request that its name be added to our mailing list to receive announcements, or Request for Proposals (RFP) by completing Standard Form 129, "Solicitation Mailing List Application." The form should be marked 7(j) Bidder's List and forwarded to the Office of Procurement and Grants Management, Grants Management Branch, 1441 L Street, N.W., Room 219, Washington, D.C. 20416.

**DEVELOPMENT ASSISTANCE 7(j)
PROGRAM**

If additional information is desired,
please contact the 7(j) Program Manager.

AWARDEE DETERMINATION

Awardees are determined by an
evaluation team of experts, using scoring
system based on the following criteria:
(1) quality, experience and staff
capability and (2) previous experience
and effectiveness in performance.
Award announcements are sent by mail
or telegram or published in the
Commerce Business Daily.

Issued by:
Office of Public Communications
Revised: January 1987

FACT SHEET NO. 36

U.S. Small Business Administration

SECTION 8(a) PROGRAM

THE PROGRAM

The 8(a) Contracting and Business Development Program started in 1968 and is named for the section of the Small Business Act from which it derives its authority. Through the 8(a) Program, small companies owned by socially and economically disadvantaged persons can obtain Federal Government contracts.

Under the program, SBA acts as a prime contractor and enters into all types of Federal Government contracts (including but not limited to, supply, services, construction, research and development) with other Government departments and agencies and negotiates subcontracts for the performance thereof with small companies in the 8(a) Program.

PURPOSE

The purpose of the 8(a) Program is to:

- (1) Foster business ownership by individuals who are socially and economically disadvantaged.
- (2) Promote the competitive viability of such firms by providing such a viable contract, financial, technical and management assistance as may be necessary.
- (3) Clarify and expand the program for the procurement by the United States of articles, equipment, supplies, service, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

ELIGIBILITY

Applicants for 8(a) Program participation must meet certain program requirements which include, but are not limited to, the following criteria:

1. **Ownership:** In order to be eligible to participate in the 8(a) Program, an applicant concern must be one which is at least 51 percent owned by an individual(s) who is a citizen of the United States (specifically excluding resident alien(s) and who are determined to be socially and economically disadvantaged.

2. **Social Disadvantage:** Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

a. **Members of Designated Groups:** Absent evidence to the contrary, the following individuals are considered socially disadvantaged: Black Americans, Hispanic Americans, Native Americans (American Indians, Alaskan Natives, Eskimos, Aleuts or Native Hawaiians); Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana, Laos, Cambodia, Taiwan), Asian Americans (persons with origins from India, Pakistan and Bangladesh) and members of other groups designated from time to time by SBA.

b. **Individuals not members of the above-named groups** must establish their social disadvantage on the basis of clear and convincing evidence. A clear and convincing case of social disadvantage must include the following elements:

(i) The individual's social disadvantage must stem from his or her color; national origin; gender; physical handicap; long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

(ii) The individual must demonstrate that he or she has personally suffered social disadvantage, not merely claim membership in a non-designated group which could be considered socially disadvantaged.

(iii) The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.

(iv) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries.

(v) The individual's social disadvantage must have negatively impacted on his or her entry into, and/or advancement in, the business world.

3. **Economic Disadvantage:** Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged.

In determining the degree of economic disadvantage consideration shall be given to the following: (1) personal financial condition of the disadvantaged individual; (2) business financial condition; (3) access to credit and capital, and (4) a comparison will be made of the applicant concern's business and financial profile with profiles of business in the same or similar line of business and competitive market area.

4. **Control and Management:** An applicant concern's management and daily business operations must be controlled by an individual(s) determined to be socially and economically disadvantaged, and such

SECTION 8(a) PROGRAM

individual(s) must be engaged in the daily management and operation of the business concern.

5. **Size Standard:** In order to be eligible to participate in the 8(a) Program, an applicant concern must qualify as a small business concern as defined for the purposes of Government in §121.3-8 of the SBA Rules and Regulations. The particular size standard to be applied will be based on the primary industry classification of the applicant concern.

6. **Potential for Success:** To be eligible to participate in the Section 8(a) Program, an otherwise eligible applicant concern must be determined to be one that with contract, financial, technical and management support will be able to successfully perform subcontracts awarded under the 8(a) Program, and further, with such support, will have a reasonable prospect for success in competition in the private sector.

Ineligible Businesses: Brokers and packagers are ineligible for 8(a) program participation.

8. **Fixed Program Participation Term (FPPT):** Every 8(a) Program participant is subject to an FPPT. An FPPT establishes the ultimate time period during which a concern may remain in the 8(a) Program and the conditions of participation, regardless of whether competitiveness is reached by the concern.

The maximum FPPT for all concerns is five years. Provided that not less than one year prior to the expiration of the FPPT, a concern may request SBA to review and extend its FPPT for a period not to exceed the difference between the FPPT established in the business plan

and the maximum FPPT of five years, plus two year (seven years total). There may be no further extensions.

9. **Program Termination:** Participation of a Section 8(a) business concern in the Section 8(a) Program may be terminated by SBA prior to the expiration of the concern's FPPT or extension thereof, if any, for good cause.

OTHER ASSISTANCE AVAILABLE

Financial assistance in the form of loans, advance payments and business development expenses are available to 8(a) Program participants. Contractors in the program can receive a wide range of assistance in managing their firms, including pamphlets, individual counseling, seminars and professional guidance. In addition, these companies may be eligible to receive the bonding necessary to perform on Government contracts.

HOW TO APPLY

It is SBA's policy that any individual or business has the right to apply for Section 8(a) assistance, whether or not there is an appearance of eligibility.

Applications for admission are to be filed and approved cases are to be serviced in the SBA field office serving the territory in which the principal place of business of the applicant concern is located. Principal place of business means the location at which the corporate records of the applicant concern are maintained.

ADDITIONAL INFORMATION

Contact the nearest SBA office for further information.

Issued by:
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February 1987

• U.S.GPO:1987-O-718-022/641

APPENDIX I

CHAPTER 1 OF THE SOP, DEALING WITH
MSB/COD PROGRAM MISSION AND AUTHORITIES,
DATED APRIL 27, 1987

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CHAPTER 1			
<u>INTRODUCTION</u>			
1. <u>THE PROGRAM'S MISSION</u>			
The Minority Small Business and Capital Ownership Development (MSB&COD) Program is the official name for the Small Business Administration's program to promote and facilitate equal access for socially and economically disadvantaged individuals' participation in the American free enterprise system. Socially and economically disadvantaged individuals include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans, (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan); Subcontinent Asian Americans; and members of other groups designated from time to time by SBA according to procedures set forth at 13 C.F.R. 124.105(d).			
a. The Agency's mission to provide assistance to all small businesses is enhanced by the MSB&COD Program. This is due to the program's recognition of the historical lack of equal access minorities and other disadvantaged persons have had to the resources necessary to develop small businesses.			
b. It is SBA's policy to afford minority and disadvantaged persons the fullest opportunity to participate in the American free enterprise system and to use all Agency resources, and other private, Federal, State and local Government assistance programs to this end.			
2. <u>AUTHORITY</u>			
The MSB&COD Program is implemented under the following existing legislative and/or other authorities:			
a. Small Business Act of 1953 as amended.			
b. 13 C.F.R. Part 124.			
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It should be recognized that the official policies and requirements upon which Agency decisions affecting the public are made, are contained in the statute and the regulations. Authority for formal Agency action should be cited accordingly. This SOP is primarily for the internal guidance of employees in performing their official functions. Authority to waive any portion of this SOP unless otherwise stated is reserved for the Associate Administrator for MSB&COD. Regional administrators may recommend with written justification, the granting of a waiver to the AA/MSB&COD where, in their opinion, a need exists. The AA/MSB&COD, as manager of the MSB&COD program, shall analyze and determine the merit of the request for waiver and shall exercise his authority as MSB&COD program manager to approve or disapprove requests for waivers. The rules and regulations in 13 C.F.R. Part 124 are not subject to waiver. 3. <u>PURPOSE OF THIS SOP</u> a. Combine in one SOP all policies, procedures, instructions, and guidelines for implementing and executing on a decentralized basis, the Office of MSB&COD program responsibilities under the Small Business Act, as amended. b. Delineate to regional administrators, within the scope of their delegated authority, responsibilities for conducting MSB&COD program operations. c. Expand and clarify the business development function of the 8(a) program. d. Clarify the role and responsibility of other SBA program offices in assisting 8(a) concerns. 4. <u>GENERAL RESPONSIBILITIES</u> a. <u>Central Office</u> The AA/MSB&COD is responsible for the management (under the supervision of and responsible to the Administrator) of the MSB&COD program and all other services and activities under section 7(j) and 8(a) of the Small Business Act. The AA/MSB&COD, or staff:			
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(1) Develops plans, programs, systems, procedures and central standards for execution of the MSB&COD program as legislated. (2) Develops targets, objectives, and plans for the execution of the MSB&COD programs. (3) Allocates Business Development Expense (BDE) funds to the regions. (4) Approves or declines a request for Business Development Expense (BDE) Funds on a particular contract, as specified below: (AA, D/AA, or designee only). (a) Capital Equipment Approves or declines requests, for capital equipment, in excess of \$500,000 or where the request exceeds 50 percent of the contract price, regardless of amount. (b) Price Differential Approves or declines requests for BDE for price differential in excess of 15 percent of the fair market price, which differential may include non-capital cost allocable to the contract. (5) Develops staffing guidelines and recommends resource allocations to the regions. (6) Coordinates with and enlists the support of other Central Office program officials to provide a coordinated thrust for all SBA programs in assisting minority and disadvantaged owned firms. (7) Reviews and evaluates program effectiveness. (8) Conducts periodic reviews of all concerns participating in MSB&COD programs and all SBA field offices responsible for MSB&COD program operations. Recommends improvements and follows up on the status of implementation.			
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(9) Advises regional offices of potential national buy requirements sought by regions for subsequent negotiation and award to support 8(a) concerns' business plans. (10) Coordinates all national buy requirements sought by regions for subsequent negotiation and award to support 8(a) concerns' business plans. (11) Provides technical advice and guidance to the field offices. (12) Maintains liaison and coordinates with other Federal departments and agencies to encourage national assistance for the MSB&COD programs. (13) Encourages and obtains involvement and commitments of industrial concerns, financial institutions, professional and trade associations, and Federal, State and local Governments to support and provide ongoing assistance to minority and disadvantaged owned concerns. (14) Approves, declines, or recommends modifications required in management and joint venture agreements involving 8(a) concerns. (AA/MSB&COD except for recommending modifications) (15) Makes final decisions on 8(a) program eligibility. (AA/MSB&COD only) (16) Develops short and long-range training plans for MSB&COD personnel. (17) Evaluates the impact of national economic trends and other indicators on MSB&COD programs, and implements necessary changes. (18) Makes final decision on program completion and termination appeals. (AA/MSB&COD only) (19) Approves or declines changes in ownership as provided for by 13 C.F.R. 124.103(e).			
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(20) Approves or declines SIC code changes as provided for by 13 C.F.R. 124.207(b)(2). b. <u>Regional Offices</u> The regional administrator is responsible to the Administrator for all MSB&COD program activities within the region. The regional administrator receives <u>technical advice and guidance</u> in the development of the MSB&COD programs from the Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD). The regional administrator supervises the program through the assistant regional administrator for minority small business and capital ownership development (ARA/MSB&COD). In conformity with SBA's policy of decentralization, regional administrators may grant in writing to district offices such authority as may be deemed necessary and prudent for implementation of the MSB&COD programs except for those limitations set forth elsewhere in this SOP, and the Agency delegations of authority. All delegations and designations of authority, including exceptions, must be made in accordance with and pursuant to the provisions of SOP 00-01, except for Contracting Officer's Certificate of Appointment pursuant to the provisions SOP 39-15. The Regional Administrator or staff: (1) Implements and administers the regional MSB&COD programs. (2) Plans, develops, promotes, stimulates, executes, and coordinates all SBA programs in assisting minority and disadvantaged owned concerns. Provides for ongoing management, marketing, financial, procurement and technical assistance to these concerns and coordinates the provision of assistance by outside sources. (3) Evaluates the region's overall efforts in meeting MSB&COD program objectives, targets, and goals.			
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(4) Monitors and evaluates district office performance in the implementation of the MSB&COD programs and develops plans for improvement. (5) Directs and coordinates the activities of regional business opportunity specialists, and contract specialists. Assesses the need for and provides training for each. (6) Develops systems and controls to ensure the effective utilization of the regional MSB&COD personnel. (7) Provides technical advice and guidance to the district offices. (8) Recommends to the AA/MSB&COD approval or decline of applications for participation in the 8(a) program based on eligibility criteria contained in the rules and regulations and this SOP. Reviews and ensures adequacy of documentation establishing social and economic disadvantage. (9) Approves or declines all requests for Fixed Program Participation Terms (FPPT). (regional administrator only) (10) Approves or declines all requests for Fixed Program Participation Term (FPPT) extensions. (regional administrator only) (11) Coordinates all intraregional local buy requirements. (12) Coordinates all interregional local buy requests with appropriate regional office(s) where the procurement is located. (13) Coordinates with the Central Office all regional requests for national buy requirement support. (14) Matches requirement offerings with appropriate 8(a) concerns based upon approved business plans.			
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(15) Executes 8(a) contract documents within Contracting Officer's authority. (16) Issues final Agency determinations on contract disputes arising under the Contract Disputes Act to the extent that such responsibility is reserved by SBA in contract documents. (17) Approves or declines requests for advance payments where the aggregate amount of advance payments for a section 8(a) contractor does not exceed 90 percent of the amount of the section 8(a) subcontract to which the advance payments relate and the amount of the advance is within his budget allocation. Also, ensures the orderly and timely liquidation of such advances. (18) Approves or declines request for BDE to the extent listed below: (regional administrator only). (a) Capital Equipment Approves or declines a request for BDE for funds up to \$500,000 for capital equipment. However, no individual request may be approved in excess of 50 percent of the contract price, regardless of amount. (b) Price Differential Approves or declines requests for BDE for price differential up to 15 percent of the fair market price which differential may include non capital cost allocable to the contract. (19) Reviews, evaluates, and recommends approval or disapproval of all management and joint venture agreements to the AA/MSB&COD. (20) Recommends approval or decline of changes in ownership as provided for by 13 C.F.R. 124.207(e). (21) Recommends approval or decline of SIC code changes as provided for by 13 C.F.R. 124.207(b)(2).			
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(22) Negotiates and administers 8(a) contracts and subcontracts. In appropriate cases authorizes procuring agencies to negotiate contract terms with the 8(a) contractor. (ARA, Supervisory Contract Specialist and Business Opportunity Specialist) (23) Delegates subcontract administration responsibilities to the procuring activity, as appropriate. (Contracting Officer only) c. <u>District Office</u> The district director is responsible to the regional administrator for all MSB&COD program activities within the district. The district director receives technical advice and guidance in the development of the MSB&COD programs from the assistant regional administrator for MSB&COD. The district director supervises the program through the assistant district director for MSB&COD. (1) Promotes, stimulates, executes and coordinates all SBA programs for assisting minority and disadvantaged owned concerns. Provides for ongoing management, marketing, financial, procurement and technical assistance to these concerns and coordinates the provision of assistance by outside resources. (2) Counsels and provides guidance to individuals desiring to participate in the MSB&COD program. (3) Reviews and makes recommendations to the regional office regarding eligibility of program applicants based on criteria contained in the rules and regulations and this SOP, including management and joint venture agreements. (4) Delegates subcontract administration responsibilities to the procuring activity, as appropriate. (Contracting Officer only)			
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(5) Recommends approval or decline to the regional administrator of requests for advance payments and BDE funds. Ensures the orderly and timely liquidation of advance payments and the use of BDE for the purposes intended. (6) Coordinates through the regional office all requests for national buy requirements support. (7) Maintains liaison and coordinates with other Federal departments and agencies to encourage district and statewide assistance for the MSB&COD programs. (8) Fosters and coordinates involvement and commitment of industrial concerns, financial institutions, professional and trade associations, State and local Governments, and community groups for support and to provide continuing assistance. (9) Negotiates and administers 8(a) contracts and subcontracts. In appropriate cases, authorizes procuring agencies to negotiate contract terms with the 8(a) contractor. (ADD, Supervisory Contract Specialist and Business Opportunity Specialist) or, if none of these positions exist, the Senior Business Opportunity Specialist) (10) Executes 8(a) contract documents within Contracting Officer's authority. (11) Issues final Agency determinations on contract disputes arising under the Contract Disputes Act to the extent that such responsibility is reserved by SBA in contract documents. (12) Matches requirement offerings with appropriate 8(a) concerns based upon approved business plans. (13) Determines if 8(a) concerns are complying with applicable Agency policies, procedures, rules and regulations and takes necessary corrective action.			
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(14) Evaluates branch office activities in promoting the MSB&COD programs and provides negotiating and contracting support. (15) Participates in the implementation of training programs for MSB&COD programs. (16) Conducts an expanded district marketing effort to address the needs of 8(a) and non-8(a) minority businesses via the subcontracting provisions of section 8(d) of the Small Business Act, and through 7(j) management, financial and technical assistance. (17) Participates in publicizing the MSB&COD program. (18) Manages the district 7(j) program for the delivery of management and technical assistance in conformity with applicable laws. (19) Recommends to the regional administrator 8(a) concerns for program completion or termination. (20) Recommends to the regional administrator Fixed Program Participation Terms for 8(a) concerns. d. <u>Contract Specialist</u> The contract specialist is responsible for carrying out activities in connection with negotiation, execution, follow-up, and maintenance of all documentation pertaining to contract and subcontract awards. Activities shall include negotiation of prices with procuring activities and participating firms; review of prime contract documents and work related to assignment of subcontracts; and determination, in cooperation with the Business Opportunity Specialist, whether the eligible small business firm has the capability to fulfill subcontract needs. The Contract Specialist also: (1) Analyzes prices and negotiates contracts with small businesses and government agencies for a variety of commodities and services. (Contracts may include fixed price, cost reimbursement, time and materials, etc.)			
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(2) Negotiates with the procuring agency on contract prices, scope of work, and other matters relating to the contract. (3) Reviews all factors involved in each procurement to ensure that the subcontractor is provided all pertinent information and advises and instructs the 8(a) concern regarding the preparation of its proposal. (4) Attends pre-negotiation conferences with small business subcontractors. (5) Analyzes all proposals to determine if the subcontractor's terms and conditions conform with the needs of the procuring agency as outlined in the requirements of the prime contracts. (6) Maintains contract files, including all documentation to the contract, such as modifications, memoranda of negotiations, and contacts with counsel on legal review. (7) Reviews and recommends through appropriate channels advance payments and business development expense through letters of credit or otherwise to the regional administrator. (8) Administers advance payments and BDE awarded under 8(a) subcontracts. e. <u>Business Opportunity Specialist</u> The primary responsibility of the Business Opportunity Specialist (BOS) is to implement and monitor the 8(a) program so as to assist in the strengthening and growth of manufacturing, construction, and service enterprises owned and operated by disadvantaged individuals through direct management, marketing, financial, procurement and technical assistance and counseling. The BOS is responsible for addressing difficult industry-wide problems and evaluating the total effectiveness and impact of the program, its limitations and any redirection it should take. The Business Opportunity Specialist also:			
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(1) Evaluates the effectiveness and limitations of the 8(a) program and recommends changes. (2) Serves as a trouble shooter in handling industry problems caused by widespread economic dislocations, energy and material shortages, labor problems, new legislation affecting small businesses, inflation, recession, etc. (3) Services a regular minority portfolio and as such conducts field visits, analyzes financial statements, resolves problems, etc. (4) Works with procurement center representatives, procurement agency personnel and contract specialists to determine items suitable for production by 8(a) concerns. Makes requirement matches. (5) Determines if proposed 8(a) subcontractors have the technical and management capability and financial resources necessary to perform proposed subcontracts. (6) Works directly with State legislatures, Federal, State and local Government procuring agencies, financial institutions and civic, trade and business associations to obtain support for the 8(a) program and their active participation in assisting in the development and growth of concerns owned by the disadvantaged. Obtains commitments of top officials of the private sector to provide management, technical and other support necessary for the development of the 8(a) concerns. f. <u>Responsibilities Concerning Investigations, Misrepresentation, Fraud, and Irregularities</u> The regional administrator/district director shall submit all allegations and/or reports of any irregularities such as misrepresentation, fraud or other violations of			
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Federal, State, or local law involving 8(a) applicants or concerns to the Special Agent in Charge, of the cognizant Central Office Duty Station of the Investigations Division, Office of Inspector General, in accordance with the provisions of SOP 90 20, "Investigations Program." g. <u>Responsibilities Concerning Irregularities Involving SBA Employees</u> Reports of known or suspected irregularities by any employee involving Agency personnel should be sent directly to the Special Agent in Charge of the cognizant Central Office Duty Station of the Investigations Division, Office of Inspector General, by any employee. (See SOP 90 20) h. <u>Responsibilities Concerning Allegations of Fraud in the Eligibility Process</u> Part 124.101(b) authorizes the AA/MSB&COD to review any determination that an individual or applicant concern is eligible to participate in the section 8(a) program whenever a member or the public submits credible evidence that such determination was based on fraudulent information, or that SBA did not follow the requirements of the regulations in rendering the determination. The AA/MSB&COD shall determine whether the facts developed during such a review warrant further action, and any review of potential misconduct shall be concluded with a detailed report of the findings to the member of the public whose information gave rise to the review. (1) This provision will not be interpreted to abrogate the Inspector General's authority and responsibility under the Inspector General Act of 1978 to conduct, supervise, and coordinate: (a) Investigations relating to Agency programs and operations; and			
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(b) Relationships with other agencies with respect to all matters relating to the prevention and detection of fraud and abuse in Agency programs and operations, and the identification and prosecution of participants in such fraud or abuse. (2) All allegations received by the Agency pertaining to fraud in the eligibility process will be referred to the Investigations Division of the Office of Inspector General in accordance with the procedures set forth in paragraphs 4f and 4g of this SOP. (3) All releases of reports or other information to the public shall be made in accordance with the Privacy Act and other applicable provisions of law. (4) All releases of reports or other information to the public involving matters referred to the Office of Inspector General for investigative consideration shall be coordinated with the Office of Inspector General prior to any release.			
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APPENDIX J

KEY ISSUES IDENTIFIED BY MSB/COD OFFICIALS

PROBLEM: Contracting Program vs. Business Development Program

WHO VIEWS IT AS A PROBLEM:

Almost everyone

WHAT IS IT AND WHY

More management capability in d(a) firms needed - key to long-term viability

IMPACT OF PROBLEM

Almost everyone

DEGREE AS TO AGREEMENT AS TO PROBLEM

Very high

HOW TO SOLVE PROBLEM AND INSTRUMENT TO BE USED (i.e., SOP, REGULATION, LEGISLATION, OTHER)

<u>HOW</u>	<u>INSTRUMENT</u>
OVERALL DECISION - MAKE IT A BUSINESS DEVELOPMENT PROGRAM WITH CONTRACTING AS A KEY ELEMENT	
Measure business development progress (contracts are only one)	SOP
Use many outside resources	Other
Fixed Term (10 years) no extension	Legislation
Mandatory training for contractors	Regulations
Competition among 8(a) firms sometime during program participation	Regulations
Reduce program responsibilities set forth in PL 95-507 in consideration of limited resources	Legislation
Use account executive concept	SOP & training

RELATION TO H.R. 1807

Some

PROBLEM: Lack of Program Evaluation System

WHO VIEWS IT AS A PROBLEM:

Almost everyone

WHAT IS IT AND WHY

Lack of data on program dynamics;
Totally inadequate systems for tracking firms which leave the
program;
Much improved internal system needed including MAC and SES

IMPACT OF PROBLEM

Everyone

DEGREE AS TO AGREEMENT AS TO PROBLEM

Very high

HOW TO SOLVE PROBLEM AND INSTRUMENT TO BE USED (i.e., SOP,
REGULATION, LEGISLATION, OTHER)

<u>HOW</u>	<u>INSTRUMENT</u>
Program objectives linked at Central Office, Regional and District Office levels; evaluation of these with input by Regional Office on Central Office progress and reverse	SOP
Make SBA computers produce data in the form that permits local analyses	Other
Systematic one-year survey of 8(a) participants and two years for those leaving the program	SOP & Other

RELATION TO H.R. 1807

PROBLEM: Approval Process Too LongWHO VIEWS IT AS A PROBLEM:

Everyone

WHAT IS IT AND WHY

No current data;
 No system to collect data (except Region III pilot);
 No common definition;
 70-day std in SOP but generally not followed

IMPACT OF PROBLEM

Everyone

DEGREE AS TO AGREEMENT AS TO PROBLEM

Very high

HOW TO SOLVE PROBLEM AND INSTRUMENT TO BE USED (i.e., SOP,
REGULATION, LEGISLATION, OTHER)

<u>HOW</u>	<u>INSTRUMENT</u>
Processing units (like Washington District Office) in selected high volume offices	Other
Expand MSB processing time pilot being conducted by Region III	SOP & Other
Applications from businesses less than two years old with decline District Office recommendations to go directly to AA/MSB&COD with copy to Region	SOP & Regulations
Establish a minimum of two years in business rule with no exceptions	Regulations
Eliminate narrative redundancy in justifications	SOP, Communications and Training
Review with the aim of reducing the current narrative comments-requests for application review	SOP, Communications and Training
Enforce ROP requirement for tracking application processing times	Other

RELATION TO H.R. 1807

Some

PROBLEM: Program ConceptWHO VIEWS IT AS A PROBLEM:

Office of General Counsel and some other SBA managers

WHAT IS IT AND WHY

Non-competitive 8(a) causes more problems than it's worth (further developed as also problem of loose compliance w/SOP (i.e., exceeds program support)

IMPACT OF PROBLEM

Everyone

DEGREE AS TO AGREEMENT AS TO PROBLEM

Varies widely

HOW TO SOLVE PROBLEM AND INSTRUMENT TO BE USED (i.e., SOP, REGULATION, LEGISLATION, OTHER)HOWCompetition within 8(a) firms at
some point during fixed 10-year
termBusiness Development must receive
primary overall thrustEnforcing current Regulations and
SOP would help prevent abuses,
a change to all competition
concept would supposedly attackINSTRUMENT

Regulations

SOP, Communications
and TrainingOther, Communications
and TrainingRELATION TO H.R. 1807

Significant

Issues for Discussion and
Debate by MSB Officials

Appendix J
Page 5 of 16

PROBLEM: Political Influence

WHO VIEWS IT AS A PROBLEM:

Many career employees

WHAT IS IT AND WHY

"Do It" syndrome -- special treatment extended to those firms with political contact -- a way of life for 8(a) firms

IMPACT OF PROBLEM

DEGREE AS TO AGREEMENT AS TO PROBLEM

Some difference based on where you sit

HOW TO SOLVE PROBLEM AND INSTRUMENT TO BE USED (i.e., SOP,
REGULATION, LEGISLATION, OTHER)

HOW

Objective procedures
uniformly applied

Educate career staff to
what constitutes legitimate
Congressional interest

INSTRUMENT

regulation

regulation
SOP

RELATION TO H.R. 1807

Issues for Discussion and
Debate by MSB Officials*

Appendix J
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PROBLEM: Resource Problems

WHO VIEWS IT AS A PROBLEM:

Some MSB

WHAT IS IT AND WHY

What should be the ratio of MSB staff to S(a) firms; there is a clear need for more staff power attention to business development given a change in concept. Recruitment difficulties add to the problem.

IMPACT OF PROBLEM

Everyone

DEGREE AS TO AGREEMENT AS TO PROBLEM

Varies

HOW TO SOLVE PROBLEM AND INSTRUMENT TO BE USED (i.e., SOP, REGULATION, LEGISLATION, OTHER)

<u>HOW</u>	<u>INSTRUMENT</u>
Outside study of staff ratio (after shift to BD thrust)	Other
Attorney dedicated solely to S(a) in selected high-volume offices	Other
Training (of published requirements already developed)	Other
Consider working with colleges on curriculum for developing potential BOS	Other
MSB to be given highest priority for support services (personnel, ADP, etc.)	Other
Redefine charter of BD under 95-507	Legislation
More effective focus will relieve resources to better use	Other
Consider some cost recovery in program services	Regulations & SOP

RELATION TO H.R. 1807

Some

PROBLEM: Front BusinessesWHO VIEWS IT AS A PROBLEM:

SBA and Congress

WHAT IS IT AND WHY

Non-minority businesses being fronted by minorities

IMPACT OF PROBLEM

SBA: minority businesses

DEGREE AS TO AGREEMENT AS TO PROBLEM

Very high

HOW TO SOLVE PROBLEM AND INSTRUMENT TO BE USED (i.e., SOP,
REGULATION, LEGISLATION, OTHER)

<u>HOW</u>	<u>INSTRUMENT</u>
Officers and board members sign individual affidavits re control	SOP & Regulations
No summary judgment to be made	SOP
Fifty-one percent of each class of stock	SOP & Regulations
Watch carefully firms who are suspect	SOP
Check Dun & Bradstreet	SOP
Consider tax returns	SOP

RELATION TO H.R. 1907

Some

Issues for Discussion and
Debate by MSB Officials
Appendix J
Page 8 of 16

PROBLEM: Sale of Contracts

WHO VIEWS IT AS A PROBLEM:

Congress; graduating 8(a) firms

WHAT IS IT AND WHY

Graduating firms not receiving contracts on competitive basis

IMPACT OF PROBLEM

Graduating 8(a) firms

DEGREE AS TO AGREEMENT AS TO PROBLEM

High

HOW TO SOLVE PROBLEM AND INSTRUMENT TO BE USED (i.e., SOP,
REGULATION, LEGISLATION, OTHER)

<u>HOW</u>	<u>INSTRUMENT</u>
Clause in options (and multi year) requiring minority control -- SBA to execute with certification by firm as to status	SOP
Conditioned on possible time limit	SOP
Special conferences/trade fairs	
Giving certificates and letters of service availability	

RELATION TO H.R. 1807

Direct

PROBLEM: Unfair Business Development Expense/Advance Payments Policy

WHO VIEWS IT AS A PROBLEM:

8(a) firms

WHAT IS IT AND WHY

Small amount given

Perception of unfairness

Scarcity of resources

IMPACT OF PROBLEM

8(a) firms and Agency resources

DEGREE AS TO AGREEMENT AS TO PROBLEM

Varies widely

HOW TO SOLVE PROBLEM AND INSTRUMENT TO BE USED (i.e., SOP, REGULATION, LEGISLATION, OTHER)

HOW

INSTRUMENT

Business loan fund available for capital equipment regardless of contract

(SOP) OMB approval needed

Perception of unfairness cannot be overcome with BDE

Other

Prorate funds available

Regulations and SOP

RELATION TO H.R. 1807

FY 1968 OPERATING PLAN

Program: MSB&CODPriority: Introducing young people to the concept of entrepreneurship

Goal: To involve highly motivated, business-oriented, minority young persons in the management of small business concerns.

Action Plan:

- A. Objective: Provide minority young people exposure to the concept of entrepreneurship.
- B. Quantitative Measures:
 - 1. Develop and implement an internship for minority young persons in which each will have a mentor of a small business owner and/or senior manager. Using local resources, including universities and trade associations, identify 1-3 organizations and 3-5 businesses in each region to participate, and match 1-2 minority young persons with each of these businesses.
 - 2. Each DO to participate in at least one high school or college program (such as Junior Achievement) designed to foster in young people an interest in entrepreneurship.
 - 3. Each RO to prepare a traveling exhibit ("booth") on SBA and the benefits of entrepreneurship, and, using this exhibit, participate each quarter in a minimum of one "Career Day" or similar program held at a local high school or college, or other appropriate seminar or conference.
 - 4. DO, RO, and CO to evaluate and report quarterly on progress towards goal attainment.

FY 1986 OPERATING PLAN

Program: MSB&COD

Priority: Involving minority young people in small business ownership

Goal: To provide opportunities to, highly motivated, business-oriented, minority to become entrepreneurs.

Action Plan:

- A. Objective: Establish and develop businesses operated by minority young persons.
- B. Quantitative Measures:
 - 1. Using all available private and public resources, each RO to assist in the establishment of 1-3 businesses owned by minority young persons.
 - 2. Each DO to conduct a minimum of one seminar or other outreach effort to educate college and graduate school students on the benefits of entrepreneurship each quarter.
 - 3. DO, RC and CO to evaluate and report quarterly on progress towards goal attainment.

FY 1966 OPERATING PLAN

Program: MSB&CODPriority: International Trade

Goal: Involve minority business concerns in the International trade market.

Action Plan:

- A. Objective: Assist minority business concerns to develop an international trade capability.
- B. Quantitative Measures:
 - 1. Using all available resources such as SBDC Cooperative Agreements, DOC Trade Reps, SCORE/ACE and SBA International Trade Specialists, each region to identify 3-5 minority business concerns with export capability, and match these minority business concerns with potential foreign customers identified by contacts with Internal Trade Associations, Economic Development Representatives from foreign governments and other sources.
 - 2. Each region to participate in a minimum of two trade fairs held by DOC, international trade associations, and other organizations.
 - 3. Each DO, RO and CO to evaluate and report quarterly on progress towards goal attainment.

FY 1988 OPERATING PLAN

Program: MSB&CODPriority: Communication

Goal: To improve communications between MSB&COD and Federal buying activities, the 8(a) portfolio, the minority business community, the private sector and the general public.

Action Plan

- A. Objective: To provide for a better understanding of the MSB&COD program, eliminate confusion and improve program image.
- B. Quantitative Measures:
 - 1. As assigned by the RO, each DO to participate in at least one seminar, conference or other meeting each quarter for the purpose of educating other Federal agencies, associations or the general public about the MSB&COD programs.
 - 2. As assigned by RO, each DO to make at least two visits per quarter to procuring installations in its area.
 - 3. As assigned by RO, each DO to hold two 8(a) Program Update Seminars per year for its portfolio companies.
 - 4. As assigned by RO, each DO to send twice-yearly lists of its 8(a) portfolio (what they do, where they are, etc.) to all procuring installations, minority business leaders and Chambers of Commerce in its area along with information about the 8(a) program and its goals.
 - 5. At the same time that SBA personnel are notified of regulatory, SOP and other policy changes in the MSB&COD program, DO to provide copies of the changes, and explanatory information, as necessary, to the SADBUs of all Federal agencies, for further dissemination to involved employees.
 - 6. Evaluate and report on goal achievement.

FY 1968 OPERATING PLAN

Appendix J
Page 14 of 16Program: MSB&CODPriority: Uniformity

Goal: Monitor field activities as they pertain to eligibility-related actions.

Action Plan:

- A. Objective: To ensure uniformity in the application of program criteria.
- B. Quantitative Measures:
 - 1. An OPE team to visit each regional office and a minimum of two district offices in each region to monitor and evaluate:
 - a. Adherence to SOP.
 - b. Policy consistency.
 - c. Timely processing of all field actions including applications, terminations, FPPT extension requests, etc.
 - 2. The visiting team to evaluate each office visited and report on the office's progress towards goal attainment.
 - 3. OPE to develop a centralized information system for tracking processing time frames and 8(a) portfolio composition.
 - 4. OPE to evaluate and report each quarter on progress towards goal attainment.

FY 1966 OPERATING PLAN

Appendix J
Page 15 of 16Program: MSB&COOPriority: Uniformity in Processing Eligibility-Related Actions

Goal: Reduce the processing time for all program eligibility actions.

Action Plan:

- A. Objective: Provide clientele with better turnaround time in processing all eligibility actions
- B. Quantitative Measures:
 - 1. OPE to establish time frames as follows:
 - a. Applications for program participation to be processed within 100 business days of receipt of a complete application package.
 - b. Fixed Program Participation Term Extensions to be processed so that firm will have a minimum of six months notice of SBA's extension decision.
 - c. Termination actions to be processed to the Office of General Counsel with 60 business days of DO/RO receipt of information which indicates that termination is appropriate.
 - 2. ROs and DOs to establish processing units, and/or processing personnel, as appropriate.
 - 3. DO, RO and CO to evaluate and report quarterly on progress towards goal attainment.

FY 1988 OPERATING PLAN

Appendix J
Page 16 of 16Program: MSB&CODPriority: Increase Impact of 8(a) Program

Goal: Increase both the number of firms participating in the 8(a) program and the number and dollar value of contracts awarded through the program.

Action Plan:

- A. Objective: To maximize the impact of the 8(a) program on the minority small business community
- B. Quantitative Measures:
 - 1. Increase 8(a) portfolio nationwide by five percent.
 - 2. Increase both the number of contracts awarded and the dollar value of contract awards under the 8(a) program by five percent.
 - 3. DO, RO and CO to evaluate and report quarterly on progress towards goal attainment.

APPENDIX K

FACT SHEETS ON SIX REGIONS VISITED

Appendix K

FACT SHEETS ON SIX REGIONS VISITED

The following pages contain selected data designed to convey the many differences, as well as similarities, among the Regions and Districts. The viewpoints expressed were those of separate key officials interviewed, generally off the record, but they convey the matters of greatest interest as we heard them expressed.

Region	Page
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IV	K-11
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VI	K-19
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Region II

Appendix K
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Region II Overview

Coverage

In this Region we had excellent interviews with the Deputy RA, the ARA-MSB/COD, the DD for New York and his Acting ADD, the ADD for the Newark Office and one of his senior staff.

Staffing Profile

Data from Personnel Roster, July 1987:

Offices With MSB Program	Total SBA Staff	Total MSB Staff	Total 8(a) Firms	Ratio of Staff to Firms
Regional Office	67	7	--	--
New York (Melville)	99	12	94	1 : 8
Newark	56	9	75	1 : 8
Puerto Rico	83	5	54	1 : 11
Syracuse	83	7	47	1 : 7
Total/Average	388	40	270	1 : 7

Some Overall Data on the 8(a) Portfolio

Region II has a portfolio of 270 firms. In 1986 318 contracts were awarded in the total amount of \$267 million. The portfolio mix was as follows:

Business Class	Percent of Firms	Percent of Contract Dollars
Manufacturing	25.7	49.2
Construction	25.0	12.8
Non-Professional	20.8	24.9
Professional	26.7	12.4
Other	1.8	0.7
	100.0%	100.0%

Observations

Region II is fortunate in being geographically compact with the exception of its Puerto Rico Office. While the workloading in Puerto Rico appears relatively high, we were advised that a number of their 8(a) firms were not active.

A further distinguishing characteristic of this Region is its dependence for contract volume on manufacturing contracts, which provide four times the dollar volume of construction contracts even though the number of firms is almost identical. This gives rise to high concern with national buys, and travel to other

Regions throughout the United States, to market Region II's portfolio. Further, there is real concern with the dominance of Region III firms in the Professional Services Contracting Program and the insufficient opportunity for other Region II professional service firms to participate in this national market.

A key marketing issue posed by the Deputy RA is whether more and smaller contracts might be sounder for the portfolio.

Some Significant Viewpoints Expressed to Us by Regional/District Officials

1. Of great interest during our visit was exposure to a report to the RA by a Special Task Force.* The report, dated March 16, 1987, was one of a series of such studies. The highlights of this study are:

- Program Philosophy: Focus on business development as the key program goal.
- Program Eligibility: Require that ownership of 8(a) firms be restricted to persons who have been determined to be socially and economically disadvantaged.
- Marketing: Create an 8(a) Marketing Division at Central Office.
- 8(a) Graduates: Involve 8(a) graduates in COD activities and in publicizing positive achievements of the 8(a) Program.
- BDE: Eliminate the BDE component as currently established.
- Staffing: Permanently assign an Industrial Specialist and a Financial Analyst to each MSB/COD Division.
- Publicly Owned Firms: Firms going public without SBA review or approval should be subject to immediate proposed termination.
- Implementation of PL 95-507 8(d): Solicit more assistance from PCRs, state and local governments, and minority business groups.
- Program Coordination: Encourage regular program interface between MSB/COD and other program areas, particularly BD and PA.
- Program Image: These excellent recommendations are worth full recounting and are set forth on page 5.

* The Special Task Force was co-chaired by Messrs. Jack Matthews and Aubrey Rogers. Mr. Rogers is now Deputy RA of Region II and has prior experience in managing the MSB/COD Program.

2. Other significant viewpoints encountered during our interviews:

- It is important to reach a larger segment of the potential 8(a) market--estimated to be at least 50% greater than now being served as a near term goal.
- More Central Office leadership is needed to work with the SADBUs.
- Further consideration should be given to the benefits of centralized contracting such as once practiced.
- Videotapes should be used more in training.
- Greater cooperation from PCRs is essential, particularly at DOD installations which need more persuasion to support the 8(a) Program. Consider appointing an "8(a) Breakout Specialist".
- Delegate 1017 National Buy determination for new applicants to a District on a test basis.
- The current contract coverage of 53% of portfolio firms is too low. Coverage—not dollar size—should be the goal.

Excerpt From Region II Task Force
Report Dealing With the MSB/COD Program

By Rogers and Matthews
March 16, 1987

IX. PROGRAM IMAGE

A. PROBLEM

The 8(a) program has experienced severe growing pains and drawn a considerable amount of bad press affecting not only this program but the Agency as well. Much less publicized this have been the program's accomplishments and success stories. This Task Force feels that in addition to making the changes recommended in this document, a comprehensive initiative must be implemented to improve the program's image. The facts are that the program is currently seen as mismanaged and good only for a few who gain access to major federal contracts through political influence and highly paid consultants. The program is disliked by procuring activities and by the general small business community, and the Agency has been ineffective in chronicling its accomplishments. This Task Force believes that this negative image of the program can be improved, hence the following recommendations:

B. RECOMMENDATIONS

1. Improve the business development skills of program staff including providing them with better professional tools to perform their functions - visual aids, etc. Staff should be better trained to enlist the aid of outside resources to assist firms in specialized areas.
2. Chronicle and publicize the business development accomplishments of 8(a) firms.
3. Take immediate steps to cleanse the program portfolio of those firms who have not made any contribution because of lack of contract assistance; those firms who have achieved the goals of their business plan; and those firms who have not complied with the rules and regulations governing the program. In this manner, the program can be opened to new qualified firms who have not had a chance to participate and program participant numbers can be kept at a manageable level.
4. Discourage acceptance of major buys through the 8(a) process.
5. Follow-up and publicize the progress of 8(a) graduates.
6. Utilize excellent user activity experiences in the "image improvement" campaign.

Region III

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Region III Overview

Coverage

We were able to make a wider coverage of Region III due to its proximity to Central Office. Altogether 12 officials were interviewed, including the Regional Office and one or more District Offices in Philadelphia, Baltimore (by telephone), Washington, D.C. and Richmond.

Staffing Profile

From August 1987 Organization Charts:

Offices With MSB Program	Total SBA Staff	Total MSB Staff	Total 8(a) Firms	Ratio of Staff to Firms
Regional Office	104	7	--	--
Baltimore	37	6	68	1 : 11
Clarksburg	35	1	11	1 : 11
Philadelphia/Branches	71	6	88	1 : 15
Pittsburgh	34	4	28	1 : 7
Richmond	40	6	95	1 : 16
Washington, D.C.	65	35	483	1 : 14
Total/Average	386	65	773	1 : 12

Some Overall Data on the 8(a) Portfolio

Region III has the largest national portfolio—773 firms. In FY 1986 1200 contracts were awarded in the total amount of \$892 million. Thus the Region is 25 to 30% of the National 8(a) Program in size. The portfolio mix was as follows:

Business Class	Percent of Firms	Percent of Contract Dollars
Manufacturing	7.8	7.0
Construction	21.3	6.1
Non-Professional	16.0	8.4
Professional	53.3	78.5
Concessions	1.6	1.0
	100.0%	100.0%

Observations

This Region we found to be the target of comments by the many interviewed at the Central Office level, both in SBA and among other Agencies. In fact, the image of the MSB Program nationally is set by the Washington, D.C. District Office in the minds of many people. This, of course, is not at all appropriate since

no other office has the size, portfolio mix and susceptibility to daily pressures. Further, this office has a workload problem unequalled elsewhere. The portfolio has increased by 66% and the contract volume has doubled in the past four years, and new applications average one per day. To cope with these problems, staff is being expanded. But, unfortunately, there are too few senior staff members, which produces a productivity problem not revealed by simple staffing ratios. This problem is discussed in Part V of the main report.

Other Region III Districts seemed to be similar to those encountered in other Regions. Everyone contacted appeared to welcome this study and the opportunity to discuss opportunities for improvement.

Some Significant Viewpoints Expressed to Us by Regional/District Officials

1. Trained personnel with awareness of ethics, and better distribution of workloads, are key goals. This Region takes the goaling process* very seriously. Training budget must be improved.
2. There is a strong desire to automate from the District level up, and to inject more analytical skills.
3. There is also a strong desire to shorten the eligibility process by using fewer reviews and more delegation. They are currently experimenting with dropping District level legal reviews in Washington, D.C. and Richmond. There is also a new approach in Washington in establishing a full-time application processing group.
4. A general interest exists in delegating contracting to the buying Agencies so that BOSs can concentrate on helping 8(a) firms learn to market and negotiate. PCRs should be helpful as monitors of the program.
5. Central Office should be a very sophisticated leadership staff in personnel, training, market research, professional development and management information.
6. The Washington, D.C. portfolio should be diversified. Some favor making this office independent of the Region. Others favor breaking the District into two or more geographic segments.
7. The Philadelphia DD chairs a Committee of the Federal Executive Board which appears quite effective in communicating with both buying Agencies and industry. Richmond has a bimonthly forum of buying Agencies and MBDA representatives, along with PCRs and Small Business Representatives, to discuss the problems and needs of the 8(a) Program.
8. General interest was encountered in dropping or tightening controls over the use of BDE and advance payments. Low interest and use may reflect the relatively few manufacturing firms in the portfolio.

* All Regions have goals and tracking systems. The Region III report on the next three pages is included as an illustration.

Region III

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Quarterly Report on FY 1987 Program Goals

Region : III
 Fiscal Year : 8/1/87 - 7/31/88
 Program Area : HRB/OB

Page 1 of 3

* = Ahead of Target
 - = Behind Target
 0 = On Target

Total Data Matrix Goal Accomplished
 Yr 87-88 Yr 88-89 Yr 89-90 Yr 90-91 Yr 91-92

Completion Date
 Target/Accomplished/Actual

\$10,300,000 - - - - -

64% of the year-end goal has been accomplished. Annual accomplishment is \$10,117,875.53. Since we have achieved less than half of our goal it does not appear we will meet our goal.

Contact Notifications
 Goal \$1,000,000, 278

of new firms in the portfolio the goal is to have 8 new manufacturing firms & 12 new firms in the Cleveland D.O. the Pittsburgh D.O.

9/30/87

3 edg. firms + 37.5% of goal
 4 new R&D firms - 33% of goal

New Available 0 - 0 - 0

R&D application processing

9/30/87

Baltimore District Office - 26 days; Philadelphia - 37 days; Pittsburgh - 30 days; Richmond - 42 days; Washington - 53 days. Cleveland did not process any applications during the third quarter. The processing unit in Washington District Office is close to being completely staffed; there are currently two positions to be filled. To assist in reducing the backlog in Washington District Office, 30 applications were given to other district offices in the region for processing.

New Available + 86/8 + - -

Region III

Quarterly Report on FY 1987 Program Goals

Page 2 of 3

Region : III
Period Ending : 06/30/87
Program Area : 062/03

•• = Short of Target
• = Initial Target
• = On Target

Target Data : Market Goal Accomplishment
Yr gr. FY '86 FY '87 FY '88 FY '89 FY '90 FY '91 FY '92 FY '93

Completion Status
Target/Achieved/Actual

Accomplishments and/or Status

Summary of Key Objectives

9/30/87

Provide management and technical assistance and run 8(a) soliciting support to transitioning 8(a) firms.

Twenty six 8(a) firms have been referred for MSA to assist with transitioning from 8(a) to commercial market.

9/30/87

Improved communication with Federal agencies.

All Market Offices have made contacts with Federal agencies. A total of 36 visits were made to Fed agencies. Agencies visited include Air Force, Corp of Engineering, DDC, U.S. Coast Guard, NSA, DDC.

9/30/87

Time frame for acceptance/rejection of requirement offerings.

All requirements were processed within a five day period. Average processing time of all RO's was 3.5 days.

9/30/87

7) management and technical assistance, N(1)-9 and N(3)10

Quarterly Report sampling used evaluation (RMA/PTC/MSA/MSA/MSA) performance. Most offices are aware satisfied with the quality of performance. Quality of RMA work in new offices needs further careful monitoring by RMA. Care must be taken to ensure payment supports effort and time and N(3) administrative requirements.

Non available - - - - -

Non available - - - - -

Non available - - - - -

Non available N/A - - - - -

Region III

Quarterly Report on FY 1987 - 4th Qtr

Region : III
Period Ending : 12/31/87
Program Area : R&D/CDD

Page 3 of 3

"A" = ahead of target
"B" = behind target
"C" = On target

Summary of Key Objectives	Accomplishments and/or Status	Completion Dates Target/Revised/Actual	Funds Available				
			Est. FY '86	Est. FY '87	Est. FY '88	Est. FY '89	Est. FY '90
FY87 Extension Request Processing time frame	No FY87 extensions were completed except for one in R&D (45 days), these in-house are still in process.	9/30/87	N/A	N/A	N/A	N/A	N/A
2 of firms performing on contract.	37% of firms are performing on contract.	9/30/87	-	-	-	-	-

Region IV

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Region IV Overview

Coverage

Eight Regional Officials were interviewed: The RA, Deputy RA and ARA; the Atlanta District Director, Deputy Director and ADD; and the Jacksonville DD and Supervisory BOS. All contacts were highly informative, and the one-man office in Jacksonville offered an opportunity to discuss the total portfolio in detail.

Staffing Profile

Data from Personnel Roster, July 1987:

Offices With MSB Program	Total SBA Staff	Total MSB Staff	Total 8(a) Firms	Ratio of Staff to Firms
Regional Office	88	14	-- ^a	-- ^a
Atlanta	71	3	85	1 : 28
Birmingham	66	1	48	1 : 48
Charlotte	37	2	41	1 : 20
Jackson/Biloxi	50	1	28	1 : 28
Columbia	43	1	34	1 : 34
Jacksonville	35	1	25	1 : 25
Louisville	39	1	21	1 : 21
Miami	42	1	36	1 : 36
Nashville	39	1	32	1 : 32
Total/Average	510	26	350	1 : 14

^a Centralized contracting

Some Overall Data on the 8(a) Portfolio

In this Region there are 350 firms in the total portfolio. Last year 398 contracts were awarded in the total amount of \$311 million. The portfolio mix by business class was as follows:

Business Class	Percent of Firms	Percent of Contract Dollars
Manufacturing	18.4	12.8
Construction	38.0	26.6
Non-Professional	18.7	20.6
Professional	24.9	40.0
	100.0%	100.0%

Observations

The Region IV profile differs from others in two major respects. One is the fully centralized contracting function at the Regional Office level which makes it feasible for seven of the Districts to staff the MSB Program with only one BOS. The Atlanta Office is unique in the nation in this approach, although Regions II and VI have attempted somewhat similar arrangements in the past. The staffing plan of the ARA's Office is depicted on page 13. The second noticeable difference is the difference in size of contracts compared to the national averages, as shown on page 14.

Region IV

Region IVStaffing Plan for the ARA's OfficeARA

ARA-MSB/COD	GM-14
Secretary	GS-5

Special Duties:

Handles CICRs and Congressionals.

Business Opportunity

Senior BOS	GM-13
Regional BOS	GS-12
Business Opportunity Technician	GS-7
Business Opportunity Clerk	GS-4
Clerk Typist	GS-4
Control Clerk	GS-4

Special Duties:

1. Locates, obtains and matches requirements
2. Handles 7(j) Program
3. Processes applications
4. Supervises management information
5. Processes requirements
6. Processes 1017s (contract support)

Contracting

Supervisory Contractor Negotiator	GM-13
Contract Negotiator	GS-12
Contract Negotiator	GS-12
Contract Negotiator	GS-11
Contract Specialist	GS-9
Clerk Typist	GS-3

Special Duties:

1. Negotiates, awards and administers contracts
2. Processes contract modifications
3. Processes BDE cases
4. Processes advance payment cases

Region IV

Appendix K
Page 14 of 25Region IV
Comparison of Contract Size for FY 1986

Type of Business	Average Value Region IV	Average Value Nationwide
Manufacturing	\$ 675,000	\$1,490,000
Construction	410,000	405,000
Non-Professional	1,146,000	770,000
Professional	1,510,000	850,000

While it is difficult to draw clear conclusions, it may be that the contracting workload in Region IV is more readily centralized because of this mix, and the less complex manufacturing contracts.

Some Significant Viewpoints Expressed to Us by Regional/District Officials

1. More Central Office leadership is needed, especially over National Buys.
2. This Region is more closely knit, it appeared to us. Not only does it have central contracting, but a Regional BOS who is available to "pinch hit" whenever needed.
3. Headquarters needs a full-time leader on automation.
4. There is questionable value in retaining both Advanced Payments and BDE. DOD uses its equipment reserves in lieu of BDE.
5. 7(j) awards need more specialization by business type.
6. This Region praised both the SBDCs and MBDA's. An excellent Bid Information System was mentioned in Florida.
7. Staffing is too tight in some of the Districts, notably Atlanta.
8. The budget process is antiquated, top down. Need own budget for training, travel and equipment.
9. More effort to tell success stories is urged.
10. More help is needed from PCRs and F&I.

Region V

Appendix K
Page 15 of 25

Region V Overview

Coverage

We had four interview sessions in this Region and talked with a dozen key officials: Deputy RA, ARA, Chicago District DD and Deputy DD, Supervisory BOS; Detroit DD, and Detroit ADD plus key staff members. A particularly valuable discussion was held with a BOS, GS-12, to explore his total portfolio of construction firms. Very useful background on the 8(a) Program since its inception was provided by the Detroit DD.

Staffing Profile

Data from Personnel Roster, July 1987:

Offices With MSB Program	Total SBA Staff	Total MSB Staff	Total 8(a) Firms	Ratio of Staff to Firms
Regional Office	78	6	--	--
Chicago	63	9	89	1 : 10
Springfield	21	-	--	--
Cleveland	32	3	42	1 : 14
Columbus/Cincinnati	47	5	54	1 : 11
Detroit	49	4	38	1 : 10
Indianapolis	43	4	24	1 : 6
Madison/Milwaukee	47	2	15	1 : 8
Minneapolis	36	3	31	1 : 10
Total/Average	416	36	293	1 : 8

Some Overall Data on the 8(a) Portfolio

In this Region there were 293 firms as of July 1987. In FY 1986 there were 404 contracts totalling \$349 million:

Business Class	Percent of Firms	Percent of Contract Dollars
Manufacturing	23.6	52.9
Construction	35.8	27.5
Non-Professional	15.7	16.3
Professional	23.6	3.3
Concessions	1.3	*
	100.0%	100.0%

* Less than 1%

Observations

This Region has similarities to Region II with a heavy reliance on manufacturing firms, except in the Detroit District where the DD contends that much of that need is served by the "Big Three" automobile manufacturers. Again, the average size of contracts bespeaks a somewhat different contracting workload:

Region V
Comparison of Contract Size for FY 1986

Type of Business	Average Value Region V	Average Value Nationwide
Manufacturing	\$2,500,000	\$1,490,000
Construction	540,000	405,000
Non-Professional	1,330,000	770,000
Professional	140,000	850,000

The above data could well contain errors, but the different character of the 8(a) awards in this Region seems apparent. It also helps explain the stress placed in this Region on marketing and the need to visit other Regions, as the Region had recently done by visiting the Electronic Systems Division in Boston to market Region V clients.

Some Significant Viewpoints Expressed to Us by Regional/District Officials

1. Market analysis for future portfolio development is essential. "Walk-ins" cannot be counted on for the optimum portfolio.
2. The key problem is getting enough contracts. Outreach to procuring Agencies and key prime contractors is a part of the program. More work needs to be done on an equitable distribution of national buys. There is a clear need for more Central Office leadership and more interest in the needs and problems of each Region.
3. Manufacturing requires more skills in technical matters, especially quality control.
4. 7(j) should be more flexible, to enable local Districts to obtain the assistance needed. One District has had no 7(j)-1-9 support for two years.
5. Travel is highly restricted except for annual reviews. Little is left for market research and contracting.
6. This Region is proud of its use of its F&I Specialists and Industrial Specialists.
7. An aggressive Management Information System Project is in process. One illustrative format of a set being developed is shown on the following page.
8. Portfolio "cleanup" is essential to terminate firms that fail (due to failure to comply with the participation agreement, death, bankruptcy, etc.).

9. Staff has "grown from misfits to fine professionals today". Our goal must be to raise the image and the quality of SBA in the Federal community as well as in the business community.

ILLUSTRATION OF ONE REGION V MIS FORMAT

REGION V - FY 87 MONTHLY CONC. SUMMARY

REPORTED PERCENT CONC.

AS OF MAY 20, 1987

(FY 87 - VIMTYPE COMPARATIVES)

Portfolio Blm	No. of Contracts	Contract Award Dollars	Champion Award One Contract	Presentations to Community Groups	New Fy. Prime Approved	Private Subsidies for 81(a)	Prime Subs. and Blm Aids	Training and Blm Aids Fy86	Stat. of the Lark to Prime	Value to Prime	Prime Amd. thru 79 (1-18)
OHIO											
Actual Performance	89	5,485,457,036	44	29	0	101	0	44	818	17	12
FY 86 - YTD	83	114,745,120	43	30	4	231	19	3	85	1	48
FYE - 86	87	140,211,961	52	36	5	240	21	10	100	9	48
CLEVELAND											
Actual Performance	42	26,311,011	26	20	2	194	16	2	187	37	23
FY 86 - YTD	38	17,800,815	24	10	1	248	13	3	233	27	25
FYE - 86	42	23,030,687	29	10	3	248	15	3	233	27	25
COLUMBUS											
Actual Performance	54	57,450,673	25	9	0	16	5	2	13	5	3
FY 86 - YTD	60	38,368,075	20	8	1	154	14	3	105	7	18
FYE - 86	61	78,110,419	42	12	1	165	21	3	113	7	18
CINCINNATI											
Actual Performance	38	8,619,379	13	15	0	27	3	2	5	2	16
FY 86 - YTD	40	17,888,020	19	14	1	497	5	3	126	14	4
FYE - 86	42	22,175,408	23	16	1	511	26	3	131	16	16
INDIANAPOLIS											
Actual Performance	24	4,625,101	8	23	1	39	11	6	26	19	19
FY 86 - YTD	17	3,513,940	8	13	0	197	5	6	56	10	9
FYE - 86	28	8,628,408	13	19	0	221	8	8	56	16	12
PITTSBURGH											
Actual Performance	15	2,680,792	7	4	0	125	5	10	20	2	7
FY 86 - YTD	10	2,345,025	4	16	0	16	14	4	20	25	12
FYE - 86	11	4,649,035	5	0	0	20	17	16	4	25	12
PHILADELPHIA											
Actual Performance	31	3,271,887	8	6	2	41	6	3	37	7	8
FY 86 - YTD	29	4,853,239	14	7	0	65	7	5	47	9	8
FYE - 86	30	6,904,974	15	13	1	71	15	5	100	13	5
REGIONAL TOTALS:											
FY 86 - YTD	293	\$170,195,879	122	104	5	543	58	68	1,045	90	80
FYE - 86	282	\$199,314,787	127	99	7	1,012	79	26	1,266	77	117
	307	\$283,910,888	179	117	11	1,456	123	88	1,317	111	138

Region VI Overview

Coverage

Interviews were held with seven officials at the Regional Office, including the RA, ARA-MSB, ARA Procurement Assistance, ARA Business Development and the General Counsel. In addition, interviews were held with the top supervisor of the MSB Program in San Antonio (by telephone) and in the Dallas District. Considerable data was provided by the ARA-MSB and his staff.

Staffing Profile

Data from Organization Chart, September 1987:

Offices With MSB Program	Total SBA Staff	Total MSB Staff	Total 8(a) Firms	Ratio of Staff to Firms
Regional Office	82	9	--	--
Albuquerque	35	5	59	1 : 12
Corpus Christi	19	1 ^a	-- ^b	-- ^b
Dallas ^c	44	5	24	1 : 5
El Paso	43	5	27	1 : 5
Harlingen	34	3 ^d	33	1 : 8
Little Rock	38	4	39	1 : 10
Houston	44	5	23	1 : 5
Lubbock	41	2	5	1 : 3
New Orleans	44	4	42	1 : 10
Oklahoma City	38	5	36	1 : 7
San Antonio	44	8	68	1 : 9
Total/Average	506	56	356	1 : 6

^a Harlingen

^b See Harlingen

^c Temporarily assigned to Regional Office ARA

^d Plus Corpus Christi

Some Overall Data on the 8(a) Portfolio

In this Region there are 356 firms in the total portfolio. Last year 462 contacts were awarded in the total amount of \$356 million:

Region VI

Business Class	Percent of Firms	Percent of Contract Dollars
Manufacturing	16.9%	36.0%
Construction	43.3	25.8
Non-Professional	16.1	26.6
Professional	23.5	11.0
Other	0.2	--
	100.0%	100.0%

Observations

This is a very difficult Region to administer. Its geographic dispersion and large number of District Offices give it the widest span of control of any Region. The shortage of travel funds worsens that problem for the ARA-MSB/COD. At the same time, the problems which have been experienced result in a disproportionate percentage of the Regional Administrator's time being diverted to MSB matters--60% by his estimate.

Some Significant Viewpoints Expressed to Us by Regional/District Officials

1. The closest to a unanimous viewpoint, usually expressed at the outset of our excellent off-the-record interviews, was: "We must insist on the highest quality of staff." It was stressed that this meant both additional training and meticulous avoidance of marginal quality staff as vacancies are filled.
2. The second matter widely encountered is the need for tighter controls over the advance payments area and the use of Business Development Expense funds. The latter is viewed with disenchantment and a willingness by some to have it fully centralized at Central Office.
3. Wide disappointment was found in the unavailability of 7(j) awards last fiscal year in Districts other than Little Rock and New Orleans. More attention to the 7(j) needs of each District clearly emerged as an important step to assist the business development of the Region.
4. Among all of the Resources available to assist MSB in the Region, the SCORE program was most favorably mentioned, with appreciation for the efforts of the current RA to make this 1300-person group more accessible using the computerized data base of its members. The plans to use dedicated cadres of SCORE members in specific locations to support the MSB program was mentioned with high expectations.
5. While improvements appear desired, the PCRs are expected to be responsive to the BOS personnel in their installation visits, not to market 8(a) firms but to facilitate meetings by MSB personnel with the appropriate buying Agency officials.

6. The hope was repeatedly expressed for better dissemination of stories to the public about SBA's programs and their successful achievements, to counter the adverse publicity which this Region has experienced.
7. Hope was expressed that the new DOD Set-Aside Program for Small Disadvantaged Businesses was "back on track" as a result of Assistant Secretary Costello's memorandum of September 25, 1987 which Region VI was helpful in precipitating. It is shown on the following page.

Region VI

Appendix K
Page 22 of 35Region VI is Proud of this Issuance.PRODUCTION AND
LOGISTICSASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-4000

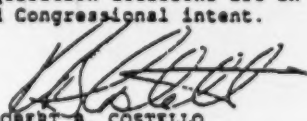
SEP 26 1987

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
ASSISTANT SECRETARY OF THE NAVY
(SHIPBUILDING AND LOGISTICS)
ASSISTANT SECRETARY OF THE AIR FORCE
(ACQUISITION)

SUBJECT: 8(a) Program Support and Small Disadvantaged
Business (SDB) Set-Asides

We have been made aware of a developing practice where field activities are using the newly authorized DFARS 19.502-72, small disadvantaged business set-aside procedures, to the detriment of the Section 8(a) Program support. As a matter of Department policy, requirements currently in the 8(a) Program are to remain in the 8(a) Program if a responsible 8(a) firm is available to perform the requirement. It is, of course, axiomatic that both 8(a) and SDB awards are creditable toward the five percent goal. If, after consultation with the Small Business Administration, a determination is made that there is no responsible 8(a) firm available, the requirement should be considered for award under the Small Disadvantaged Business Set-Aside Program. Other requirements requested for the 8(a) Program are to be evaluated and a decision made in accordance with FAR 19.804, prior to consideration of the requirement for the Small Disadvantaged Business Set-Aside Program.

The objectives of the 8(a) Program can only be realized through our continued strong support. Your assistance is requested in ensuring that acquisition decisions are in consonance with DoD policy and Congressional intent.


ROBERT B. COSTELLO

Region IX Overview

Coverage

Seven interviews were held in this Region, beginning with the ARA in San Francisco who was Acting RA during our visit. (We later had a brief visit in Washington with the RA.) The ARA was especially helpful in discussing staffing strengths and weaknesses. The District Director in San Francisco and his ADD provided excellent separate discussions. In Los Angeles, the DD and his Deputy (who was formerly Deputy in Chicago), the ADD and a senior BOS were available for separate discussions.

Staffing Profile

Data from Personnel Roster, July 1987:

Offices With MSB Program	Total SBA Staff	Total MSB Staff	Total 8(a) Firms	Ratio of Staff to Firms
Regional Office	66	5	--	--
Fresno	29	2	19	1 : 10
Agana	8	-	--	--
Honolulu	22	1	26	1 : 26
Los Angeles	81	10	126	1 : 13
Los Vegas	14	1	15	1 : 15
Santa Ana	27	-	--	--
Phoenix	29	4	36	1 : 9
San Diego	43	5	46	1 : 9
San Francisco	47	9	116	1 : 13
Sacramento	16	-	--	--
Total/Average	382	37	384	1 : 10

Some Overall Data on the 8(a) Portfolio

In Region IX there were 384 firms as of August 1987, compared to a total of 411 in March 1987. The current year goals are to reach a range of 410 to 484 firms. The contract volume for FY 1986 was \$70 and the dollar total was \$429 million. The portfolio mix was as follows as of March 1987:

Region IX

Business Class	Percent of Firms	Percent of Contract Dollars
Manufacturing	18.7	12.1
Construction	32.8	27.5
Non-Professional	17.0	17.1
Professional	31.3	43.3
Concessions	0.2	--
	100.0%	100.0%

Observations

Region IX is heavily weighted toward the professional services contract market, as is Region III and Region I. Further, the contract values run higher than the national average in this category, and much lower in manufacturing:

Region IX
Comparison of Contract Size for FY 1986

Type of Business	Average Value Region IX	Average Value Nationwide
Manufacturing	\$ 525,000	\$1,490,000
Construction	524,000	405,000
Non-Professional	703,000	770,000
Professional	1,311,000	850,000

One major different practice in staffing the MSB Program in Region IX is to hire new staff in the 1102 Procurement Series, on the premise that better quality applicants are likely in this Region and they can then be trained in the other skill categories required for business development. This practice deserves careful evaluation.

Some Significant Viewpoints Expressed to Us by Regional/District Officials

1. This Regional Administrator is giving personal attention to the MSB MIS System nationwide.
2. There are no adequate staffing guides.
3. The MSB Program is described as the most political and the most difficult in SBA. An SOP on Congressional inquiries is needed.
4. Stronger Central Office oversight is needed with buying Agencies. Visits to Commanding Officers are important. A slowdown in support is feared under the new DOD set-aside.

5. Market analysis is the key to portfolio development, especially in manufacturing and services. Portfolio cleanup is a problem. Quarterly 8(a) visits are desirable.
6. No adequate training exists for business development skills, especially in financial analysis and marketing.
7. There is some concern about loss of ARA participation in the CICR process, which has been a good discipline for visiting Districts and making a comprehensive review. The CICR checklist needs revision.
8. There is opposition to dropping the Regional and Central Office reviews of new applications, but reversals of District recommendations need full discussion.
9. 7(j) awards have been too late for effective use.
10. BDE should probably be dropped, and advance payments should be placed under tighter control.
11. SCORE is a great asset.

APPENDIX L

PROFILES OF AWARD WINNING

8(A) GRADUATES OF THE YEAR FOR 1987

SBA REGION I WINNER

John H. Murphy, President
EASTERN GENERAL CONTRACTORS, INC.
Springfield, Massachusetts

Eastern General Contractors was approved for the 8(a) program in 1974. By the time the firm graduated in 1983, they had received 60 contracts totaling \$26,593,810. In the beginning, one of the firm's main problems was obtaining adequate bonding capacity. In 1983, the firm's bonding capacity was \$12 million, now it is \$30 million.

When started, the firm did small renovations, and now does larger renovations, building and designing. The firm has offices in Springfield and Ayers, Massachusetts, and has constructed hotels, bus terminals, schools and housing. All work is competitive.

Eastern General is a supporter of Camp Atwater for underprivileged children. Murphy is a board member of the Springfield Urban League and the Mason Square Executive Committee, and is president of the Western Massachusetts Contractors Association.

Eastern General was named Contractor of the Year in 1985 by the Contractors Association of Boston and was runner-up as Prime Contractor of the Year for SBA Region I in 1986.

Murphy views his firm as a training company. Most of his present employees have been trained and promoted through the ranks while employed at Eastern General Contractors.

SBA REGION II WINNER

Toshihiko Sakow, President
TOSHINIKO SAKOW ASSOCIATES, INC.
Passaic, New Jersey

Toshihiko Sakow Associates, Inc. was started in 1972 and was approved in the 8(a) program the same year. It graduated from the program in June 1985. While in the 8(a) program, the firm received 26 contracts totaling more than \$4.3 million.

The firm specializes in planning, designing and fabricating exhibits for trade shows, visitor centers and museums.

Upon graduating from the program, the firm moved into a new 40,000 square foot facility. The new facility increased its capability of production, design and warehousing. Sakow employs up to 40 persons in its busy season.

The firm has been able to develop an international network to support the marketing efforts of its clients. For example, the firm has designed and fabricated exhibits and products for the Paris Air Show, the governments of Taiwan and Japan, NASA, the Smithsonian Institute, Minolta Corporation, Airbus Inc. and Panasonic, to name a few. TSA designed the interiors of the Presidential helicopter under a Sikorsky Helicopter Company commercial contract.

The firm has contributed exhibits and donated funds to community projects and charities, including the Red Cross, Heart Association, local fire and police departments and to the Astronaut Ellison Onizuka Memorial in Hawaii. Sakow has been honored for its work by the National Park Service (1986) and NASA (1985).

SBA REGION III WINNER

Leon E. Ellerson, President
KEYSTONE COMPUTER ASSOCIATES, INC.
Fort Washington, Pennsylvania

Leon Ellerson started Keystone Computer Associates in 1975 and was approved for the 8(a) program the same year. Keystone graduated in 1983. While in the program, Keystone Computer Associates received 114 contracts totaling more than \$22.5 million.

Starting with 55 employees, the firm now has more than 150. Forty percent of the staff is minority; 35 percent of whom are technical managers. The company has developed a special program to bring in inner-city high school graduates and train them in various areas in support of technical projects. Keystone has never laid off employees because of lack of work. About 80 percent of the employees have been with the company for more than 12 years.

Keystone Computer is currently performing on 16 contracts with the Naval Air Development Center, all won through open competition or small business set-asides. The firm has won two five-year contracts in 1987--one for \$5.1 million and the other for \$2.5 million.

In 1987, Ellerson was named the Small Business Person of the Year for the SBA Philadelphia district office, and was nominated for the Small Business Prime Contractor of the Year for Region III.

Keystone regularly supports North Penn Hospital, the local police and fire department and several local day camps for inner-city children. Ellerson is involved in scouting, Little League, the Southern Christian Leadership Conference and Kappa Alpha Psi Fraternity.

SEA REGION IV WINNER

Roy Terry, President
TERRY MANUFACTURING CO., INC.
Roanoke, Alabama

Terry Manufacturing was started in 1963. Since its meager beginnings, the firm now employs 190 people--80 percent of which are minorities. The firm cuts and sews military and civilian clothing.

The firm was approved in the 8(a) program in 1979. When Terry Manufacturing graduated in 1985, it had received 27 contracts totaling \$32.9 million.

The firm has received a contract worth \$7.5 million from the Department of Defense on a competitive basis.

Since graduation from the 8(a) program, Terry Manufacturing Co. has managed to expand its market in the federal and private sectors.

Roy Terry is chairman, Committee for Voter Registration in Randolph County; sponsor, Little League Baseball in Roanoke, Alabama; member, National Organization Minority Business Brain Trust; and member, board of directors, Federal Reserve Bank, Birmingham Branch.

He has received the A. G. Gaston Award for Business from Alabama Democratic Conference and *Black Enterprise* magazine named the company Manufacturer of the Year in June 1973.

SBA REGION V WINNER

Sherman R. Smoot, Chairman of the Board
Lewis R. Smoot, President and Chief Executive Officer
THE SHERMAN R. SMOOT COMPANY
Columbus, Ohio

The Sherman R. Smoot Company was started in 1946 in Charleston, West Virginia. In the beginning the firm was primarily involved in commercial masonry construction. In 1972, the firm expanded to include complete general contracting and construction management services. The firm also expanded into six other states and the District of Columbia.

The Smoot Company was approved for the 8(a) program in 1976 and had received contracts totaling \$39.2 million when it graduated in 1985.

The company is committed to the disadvantaged workforce and has consistently over the years had a 33 percent minority and female workforce.

Although The Smoot Company has graduated from the 8(a) program, it continues to help those companies in the program. The company presently is providing bonding, financial and technical assistance to many 8(a) and other minority-owned companies.

Both Lewis and Sherman Smoot are active in the community. Their involvement includes the National and Columbus Chamber of Commerce, Ohio Valley Builder's Exchange, National Minority Contractors Association, Boy Scouts of America and Mt. Carmel Hospital Foundation Board.

The company was named the Small Business Person of the Year by SBA in 1979.

SBA REGION VI WINNER

Liboria Hinojosa, CEO and Chairman of the Board
 Ruben E. Hinojosa, President
 H&H MEAT PRODUCTS CO., INC.
 Mercedes, Texas

H&H Meat Products celebrates its 40th anniversary this year. The company was started by Salvador Hinojosa, the father of the present owners. The company prospered under his direction.

The firm was approved for participation in the 8(a) program in 1976 and graduated in 1984. While in the program, they received 94 contracts, valued at \$41.9 million.

The company was hit hard by the devaluation of the peso because of its heavy concentration of meat sales on the Texas-Mexico border. In addition, the freeze in December 1983 in the Lower Rio Grande Valley caused a severe problem. But H&H dug in and overcame these obstacles. Through various programs, H&H helped reduce unemployment in the area and 90 percent of its employees are Mexican-American.

In 1966, the firm was asked to move its operations outside the city limits. With a loan from the U. S. Small Business Administration, the firm built a new plant and purchased new equipment.

H&H Foods is recognized as one of the top ten Hispanic-owned food companies in the nation. In 1983, H&H was named the Outstanding Minority Enterprise in America by the Minority Business Development Agency, was honored in 1973 as the Small Business Person of the Year for Texas by SBA.

H&H uses minority-owned firms in all facets of their business--from legal needs to insurance, from cattle to construction. H&H is one of the strong financial contributors to the Mercedes public schools and churches. Staff members and officers are active in United Fund drives, Little League baseball, Mercedes Chamber of Commerce. A contribution has been made to the University of Texas to create a professorship (permanent endowment) for the college education of Hispanics.

SBA REGION VII WINNER

Jimmy L. Woodley, President
SERVICE/COMMERCIAL JANITORIAL & SPECIALITY MAINTENANCE
Kansas City, Missouri

When Jimmy Woodley formed his firm in 1968, he faced the usual difficulty of minority entrepreneurs: finding the necessary financial backing. He joined the 8(a) program in 1972, and before leaving the program received seven contracts worth \$225,000.

Today, Woodley's company employs 100, twice the number when his 8(a) participation began. His largest non-8(a) contract was for \$2 million, with General Motors. He also received help from an SBA business loan, which was repaid on schedule. Sales in the Fiscal 1986 year totaled almost \$4 million.

Woodley makes a distinct point of seeking out minority subcontractors. The company has a special service department which specializes in construction cleanup and fire and water damage cleanup.

Woodley has received special safety awards from General Motors and the Building Service Contractors Association. The Raytown Chamber of Commerce has named him Small Business Man of the year. He is active in the local Boys Club, is a member of four chambers of commerce and is on the board of the Metropolitan Community Colleges.

REGION VIII SBA WINNER

Leon Young, President
YOUNG JANITORIAL SERVICE OF COLORADO
Colorado Springs, Colorado

Leon Young formed his company in 1970 and joined the 8(a) program the next year. He left the program in 1985, after receiving 25 contracts worth \$5.6 million. He started with six employees, now has 183. In his last fiscal year, Young's company had sales of \$1.8 million.

From the start, Young made concerted efforts to utilize minority contract lists to submit competitive bids for portions of contracts.

Young's philosophy has been described as one of "pride." His involvement in the community has been called "legendary." He has spent 11 years as a Colorado Springs councilman and has quietly assisted hundreds of his fellow townspeople. In 1982, Young was selected by the Colorado Chamber of Commerce as the Small Business Person of the Year. Young also has received the Small Business Administration's Minority Advocate Award.

SBA REGION IX WINNER

Charles Herman Ellis, President
ELLIS POULTRY PROCESSING, INC.
Delano, California

Charles Ellis founded his turkey processing company in 1970, and at first had difficulty establishing markets for his products. He joined the 8(a) program in 1975, and that certification over the next 11 years yielded 56 contracts worth \$15.2 million while permitting Ellis to build up his non-8(a) sales.

Company sales in the 1986 fiscal year totaled \$6.4 million. Ellis now employs 43 full-time workers.

In 1983, three years before Ellis left 8(a), SBA provided him with BDE funds to install a cold storage facility which allowed the company to triple production. Work on the facility was done by minority firms.

Ellis has donated processed turkey parts to a long list of area charitable organizations. The Delano Chamber of Commerce several years ago presented Ellis with its community service award.

SBA REGION X WINNER

Reginald S. Frye, President
Hank A. Arviso, Vice President
3A INDUSTRIES, Inc.
Seattle, Washington

Reginald Frye and Hank Arviso were top salesmen when 3A Industries, a general construction firm, was founded in 1972, with about 10 workers. In addition to the usual difficulties faced by a minority firm--establishing banking and insurance relationships and getting credit--the two men had trouble convincing skilled craftsmen to work for a minority company.

3A Industries became an 8(a) participant shortly after being started, and before it graduated in 1985 had received 30 contracts worth \$18.8 million. Today, the company has about 75 workers and sales nearing \$6 million a year.

The company initially worked on residential construction and heating installation. The company then added a chemical manufacturing operation, obtained contracts to work on the Alyeska Pipeline and now is a partner in the Pacific Northwest's first minority-owned transit company. Frye and Arviso have made special, and successful, efforts to adapt to changing construction and economic trends in the Northwest.

The company has had contracts with more than 30 minority-owned firms and has entered into joint ventures with several other minority-owned firms.

Frye and Arviso have provided staff and materials to community self-help projects and are active in the NAACP, Seattle Urban League and government advisory councils. The firm has received special recognition from a long list of organizations; included are the United Inner City Foundation Award, the Martin Luther King, Jr., Humanitarian Award and Progressive Minority Business Award.

APPENDIX M

BUSINESS OPPORTUNITY SPECIALIST
CAREER DEVELOPMENT TRAINING PROGRAM

Appendix M

BUSINESS OPPORTUNITY SPECIALIST
CAREER DEVELOPMENT TRAINING PROGRAM

SMALL BUSINESS ADMINISTRATION

SBA NOTICE

NOTICE NO.: 8000-120

EFFECTIVE: 6/10/87

TO: Regional Administrators, ARAs/MSB&COD and District Directors

SUBJECT: Business Opportunity Specialist (BOS) Career Development Training Program

One of our forthcoming major initiatives Agencywide is to provide quality training to ensure that we maintain, and in some cases improve, standards of professionalism and "state-of-the-art skills" among our workforce. I am particularly concerned that new employees entering the Minority Small Business and Capital Ownership Development (MSB&COD) Program receive entry-level training that will provide a solid basis for rapid growth and productivity in delivery of services to the small business community.

To this end, the Office of MSB&COD, in concert with the Office of Personnel, initiated a Training Needs Assessment workshop to develop a Career Development Training Program for the Business Opportunity Specialist. Its purpose is two-fold: (1) to identify those types of training necessary to make BOS personnel proficient in their work and (2) to ensure that the training and employee development program is oriented to the achievement of MSB&COD goals. Please review the attached draft of the Business Opportunity Specialist Career Development Training Program and submit your comments to Edward C. Neal prior to June 29, 1987. Similar plans will be developed for other MSB&COD Program Specialists, and will also be forwarded for your comments.

Wilfredo J. Gonzales
Associate Administrator
for Minority Small Business
and Capital Ownership Development

Richard L. Osbourn
Director of Personnel

Enclosure

Business Opportunity Specialist
Career Development Training Program

GS-5/7

- o SBA Orientation
- o MSB&COD Program Orientation
- o Detailed Review of MSB&COD Regulations and SOP
- o Principles of Accounting or Accounting I
- o General Business or Principles of Small Business Management
- o Basic Procurement

GS-9

- o Financial Analysis Courses
 - Entelek Program Course, "Analysis of Financial Statements"
 - or
 - Analysis and Interpretation of Financial Statements (OPM Course)
 - or
 - Dun & Bradstreet Basic Course in Credit and Financial Analysis
- o Principles of Marketing
- o Time Management

Communications Skills Courses

Desired courses to be taken at GS-5 through GS-9 levels based on need and availability:

- o Basic Communications Skills
- o Effective Listening
- o Fundamentals of Writing
- o Interpersonal Communications
- o Interviewing Techniques

GS 11/12

- o Public Speaking
- o Stress Management
- o Falls Management Institute Course, "Understanding the Construction Firm"

APPENDIX N

8(A) FINANCIAL INFORMATION SYSTEM
AND PLANS FOR IMPROVEMENT

U. S. SMALL BUSINESS ADMINISTRATION
PROFILE OF AUTOMATED SYSTEMSI. IDENTIFICATION INFORMATION

System Name (full)	8(a) Financial Information System
(acronym)	8(a) FIS
System Status	Production
Program Office	MSB/OOD and Comptroller

II. SYSTEM OVERVIEWA. PURPOSE

The 8(a) Financial Information System is designed to provide the Small Business Administration with the ability to be more timely and responsive to agency needs in reporting accurate 8(a) Program information. In order for SBA to meet the information needs of program managers, Congress, Office of Management and Budget, General Accounting Office and other government agencies, the 8(a) FIS uses a centralized data base to furnish timely and accurate reporting of advance payment transactions, business development expenses, letter of credit, and other important financial information as well as keeping track of pertinent data on each company, contract and special bank account.

B. HISTORY OF THE SYSTEM

The automation of 8(a) program information began in 1971. The first system contained minimal data; basic data for each company and contract. At the end of fiscal year 1973 (June 1973) certain summary information was forwarded to the White House that subsequently was found not to be in agreement with that contained in the automated system. An audit was carried out in February 1974 to reconcile the contracts for FY 73 and FY 74 to date. Following the audit, the design of the second automated system was initiated. This system contained additional information on each company and contract. Information on requirements was introduced also. This second system was implemented on October 1, 1975 after a series of field office training sessions. This system, like the first, involved the coding of input documents that were sent to Central Office and updated to the mainframe computer. The existing 8(a) FIS (the third iteration) began in 1978 as SBA's response to criticism from Congress regarding the way SBA was maintaining its accounting records for advance payments and business development expenses (BDE). The first phase in the Fall of 1978 was to convert the manual accounting records to a small system on a time-sharing network (Computer Sciences Corp.) that SBA was doing business with at the time. Phase two (1979) was the initial design for an 8(a) FIS to be implemented on a time sharing system outside of SBA's computer environment (United Computing Services, Kansas City). Phase three, also starting in 1979, was the continuation of the design after SBA management made the decision to implement the new system on SBA's mainframe as part of the new SBADCS network. The installation of the original Dobson-Woodbury terminals was made part of the contract.

The contractor turned the system over to SBA for acceptance testing in August 1980. Due to numerous system and programming errors the new system was not put into production until March 16, 1981. Except for some minor changes and additional reports, the basic functions of the system remain unchanged to date.

C. COMPONENTS OF THE SYSTEM

The 8(a)FIS is composed of, or makes use of, the following:

1. SBADCS User Manual, Chapter 6 and Appendix 11
2. Input Document Preparation Instructions (originally issued in 1980 and never reissued)
3. Computer Terminals
4. SBADCS Network
5. Mainframe Computer
6. Master Files - The Data Base

The 8(a)FIS data base is composed of several files accessible to the network user.

Company Master File
Contract Master File
General Ledger Master File (Central Office only)
Transaction Input File (input only-no inquiry capability)
Transaction History File (for contract modifications only)
Special Bank Account Master File

The users of the system are directly involved in building these files and keeping them up to date.

D. BASIC FUNCTIONS OR CAPABILITIES

Maintains a master file of all companies certified as 8(a) companies.
Maintains a master file of all contracts awarded to each company.
Maintains a general ledger for applicable accounts.
Maintains data on advance payments, letters of credit and business development expenses.
Maintains a special bank account master file for the field office's use in tracking deposits and withdrawals for advances etc.
Prepares periodic reports for users as well as providing for ad hoc reporting.
Provides network screen inquiry capability.

E. SYSTEM UPDATE PROCEDURE

Data is entered into the 8(a) FIS through SBADCS terminals installed in the field and central offices. Formatted screen displays are used to input the data. The SBA field offices enter transactions pertaining to company and contract additions, changes, and contract modifications as well as special bank account transactions. The central office enters BDE allotments, cash receipts and disbursements, letters of credit, journal vouchers, company and contract deletes and other types of entries as needed.

The 8(a) FIS receives data from the SBADCS terminals located in the various SBA offices and batch processes the day's transactions overnight. The data is stored in a transaction file pending the master file updates. During the updating process, invalid transactions are identified by the system and routed to the Message and Report Transmission System (MTS-see Chapter 7 in the SBADCS User Manual) for call up by the originating offices. Valid transactions are also routed for subsequent verification. The 8(a)FIS user instructions are contained in Chapter 6 to the aforementioned SBADCS Manual.

Data recorded in the 8(a) FIS master files is available to the user through online inquiry screen displays and the scheduled generation of system reports. The 8(a) FIS interfaces with the SBA general ledger through daily updates of account balances.

F RECURRING REPORTS PRODUCED BY THE SYSTEM

1. Monthly Reports

- Summary Trial Balance
- Detail Subsidiary Trial Balance
- List of Contract Actions and Modifications For Current FY
- Month End Summary of Transactions
- Portfolio Distribution (Business Class, Minority Code, Region)
- List of Companies By SIC
- 8(a) Company Portfolio(Zeroxed)
- Report of BDE Allotments/Detailed Report of BDE Approvals
- Contract Summary By Business Class, Minority Code, Region
- Contract Summary By Procuring Agency

2. Quarterly Reports

- Ranking of All Active Companies (Total Contracts)
- Top 100 Companies For Current FY With Percentages
- PASS Tape (tape of active companies sent to PASS System)
- Army Tape (tape of active companies sent to Dept. of Army)
- Veterans Report (sent to Office of Veterans Affairs)
- Regional Chronological FPPT List
- National Chronological FPPT List
- Alphabetic List-Active Companies
- Alphabetic List-All Companies
- Active Contracts Sorted By Completion Date

G. COMMONLY USED INQUIRY SCREENS

- FISQ01 - Displays information on a particular company.
- FISQ02 - Displays information on a particular contract.
- FISQ22 - Displays all contracts for a particular company with current net amount, advances and BDE disbursed with grand totals for each.
- FISQ25 - Displays all contract modifications for a particular contract with net total.
- FISR03 - Displays current FY summary data for each office (Information regarding this screen was sent to users via an MTS message in July 1987. Will be in next update to SBADCS User Manual)

III. RESPONSIBILITIES

The Office of Associate Administrator MSB/COD and the Office of Comptroller are responsible for establishing the data requirements and processing specifications for the system. The Office of Information Resources Management is a servicing function and is responsible for the programming, maintenance and daily operation of the system. The various field offices, as well as the Office of Accounting Operations, are responsible for inputting and reconciling the data pertaining to each.

IV. IMPROVEMENTS MADE TO THE SYSTEM IN RECENT YEARS

Allowing the inputting of a contract for a graduated company.

Allowing contract modifications to process against contracts of graduated companies.

Allowing contract modifications to contracts marked as closed.

Using the inputted agency code in the contract action to pick up the agency name and drop the edit against the name in the input transaction.

Allowing a modification decrease to a contract to process even though it comes in ahead of a modification increase in the same day.

Changed the edits to ignore the BDE for Equipment field on contract modification actions since it is not relevant to those actions.

Added new company status code 7 for regional transfers.

Added new company status codes 5 and 6 pertaining to FPPT dates.

Added FPPT date to the company master file.

Eliminated sponsor data.

Printing of valid transactions daily via FISR01.

Creation of an office summary record for current FY data and the display of same via screen FISR03.

New inquiry screen FISQ25 to display contract modifications for a given contract.

V. IMPROVEMENTS NEEDED

A. Short Term

Change the daily valid transaction printouts so that an entire page is not printed for each transaction code 101 action. This will cut down on paper waste etc. when a large number of changes such as financial information are entered on the same day.

Better quality control for data input. User's inputting data need to develop the habit of sight verifying the data entered on the screen before transmitting. This will help to eliminate some of the blatant errors in original contract amount that have occurred. Input document preparers need to take more care in preparing these documents, particularly in the readability of the handwriting and proper codes for fields that have codes. Correct codes are available in the SBADCS user manual.

Update the original input document preparation instructions and incorporate them into the SOP.

Solve the problem of how to properly track basic order agreements.

A new company input screen to replace the existing two screen input is needed. This new screen will be multi-function, i.e. allow for the addition, inquiry and updating of a company record. Multiple changes can be made with one transmission. This screen will have on-line edits and will update the master file immediately instead of waiting for the nightly update run.

A new contract screen should be provided to provide for on-line edits and, if possible within the general ledger constraints, immediate update of the contract master file.

Establish a set format and procedure for FPPT date and adhere to it. The present variation in the contents of this field do not allow us to perform any automated analysis or extracting of specific date ranges.

B. Long Range

Resurrect the results of the 1983 contract for needs assessment and use it as the starting point to study the feasibility of maintaining data on personal computers in the field and central office. Information needed by central office for management use could be uploaded from the PC's to the mainframe.

Establish ad hoc reporting capability in MSB central and field offices from PC's and mainframe.

Revise mainframe system to utilize the newest developments in hardware and software technology, i.e. data base technology with real time updating etc.

JOHN BREAUX
LOUISIANA

COMMITTEES:
AGRICULTURE, NUTRITION, AND
FORESTRY
COMMERCE, SCIENCE AND
TRANSPORTATION
ENVIRONMENT AND
PUBLIC WORKS
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510

May 5, 1988

The Honorable Dale Bumpers, Chairman
The Honorable Lowell Weicker
Senate Small Business Committee
Washington, DC 20510

Dear Senators Bumpers and Weicker:

I am pleased to write to you on behalf of my constituents concerning S. 1993, the 8(a) reform legislation currently pending before the Senate Small Business Committee.

I have received considerable mail from the small business community in Louisiana concerning S. 1993. They have raised concerns on several provisions of the bill. I would like to take this opportunity to share my views with you in the hope that they prove insightful as the Committee begins mark-up on this legislation. The provisions that are of most concern are:

- *the elimination of the prohibition on the sale of the business provision;
- *the mandatory 8(a)/non 8(a) business mix provision;
- *the \$2 million/\$1 million dollar competitive threshold; and
- *the provision of a ten year term of participation with a reasonable transition period for firms in the program.

In my view, the prohibition on the sale of the business provision should be eliminated because of the significant adverse effects it will have on firms after they graduate from the program. The effect of this provision is to prohibit a firm from recapitalizing. Please keep in mind that no other sole source or small business programs include such a harsh provision. The inclusion of this provision into the 8(a) program seems hard to justify. I am concerned that firms may be denied access to financial markets simply because the ownership interest cannot be diluted 51 percent under this provision.

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The Honorable Dale Bumpers
The Honorable Lowell Weicker
May 5, 1988
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I would suggest that the 8(a)/non 8(a) mandatory business mix be changed to a goal for a mix of competitive/non-competitive contracts. Firms progress at varying rates in their ability to attract federal and non-federal business. In addition, the mix as it presently stands does not account for contracts competed within the 8(a) program. My constituents urge and I support changing the provision to a goal which would require firms to document their attempts to win competitive procurements.

The competitive threshold provision should be changed to either exclude options and modifications in determining the threshold or the threshold should be raised significantly. Since the original intent of the competitive threshold is to ensure that 50 percent of the Section 8(a) contract dollars are competed among Section 8(a) firms, the provision regarding the competitive threshold in S. 1993 should be modified in order to meet that intent.

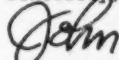
The final issue raised by my constituents pertains to the incorporation of a provision for a ten year term of participation in the program from the date of first award of a Section 8(a) contract. Since the program is a developmental program, anything less than a ten year term may impede the purpose of the program. The program as it currently exists contains mechanisms such as size standards and the "program completion" provisions of the SBA's regulations which would monitor a firm's growth and would "exit" firms which do not need a full ten year term. These mechanisms or controls also serve to help curb the past abuses that have been associated with the 8(a) program.

In addition, I support the inclusion of a reasonable transition period for firms which were in the program as of January 1, 1987. While provision for a transition period is currently made in S. 1993, that provision does not go far enough. Current participants need a longer transition period because it was not until the mid-1980's that procuring agencies began to be inclined to utilize the Section 8(a) program.

The Honorable Dale Bumpers
 The Honorable Lowell Weicker
 May 5, 1988
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Again, I look forward to working with the Committee as it continues to formulate efficient and responsible reform legislation for the 8(a) program. I look forward to learning of your views on these issues.

Sincerely,



JOHN BREAU
 United States Senator

JB:jas

DANIEL E. MOUTY HAWAII CHAIRMAN
 DANIEL E. EVANS WASHINGTON VICE CHAIRMAN
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 DENNIS DECONING ARIZONA
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 JOE MENTOR JR. MINORITY COUNSEL

United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-8450

May 9, 1988

The Honorable Dale Bumpers
 Chairman
 Committee on Small Business
 428A Senate Russell Office Building
 Washington, D.C. 20010

Dear Mr. Chairman:

I appreciate your consideration of my interest in assuring that the 8(a) Minority Small Business program is serving the needs of Native Americans. I also appreciate the concerns you raised in your letter to me regarding recommendations I made and want to assure you that I will do whatever is in the best interests of your committee.

One proposal I would like to bring to your attention that I believe would provide an important incentive towards encouraging Native Hawaiians to become business entrepreneurs is the inclusion of "Native Hawaiian community organizations" under the definition of "Indian Tribes". A Native Hawaiian community organization is defined as any community organization whose purpose is economic development, among other purposes, and which has at least 51% Hawaiian membership and is chartered and located in the State of Hawaii.

This proposal would expand the eligibility of Native Hawaiians to engage in business opportunities in the federal procurement process. Although I recognize that Native Hawaiians are already eligible to apply for 8(a) status as individual entrepreneurs, the Select Committee on Indian Affairs' hearing of February 23, 1988 showed that Native Hawaiian participation in the 8(a) program is low. No single reason has been identified for this low rate, but generally, the same reasons for low Indian participation apply to Native Hawaiians. These reasons include cultural differences, geographic isolation, and the absence of experienced business managers.

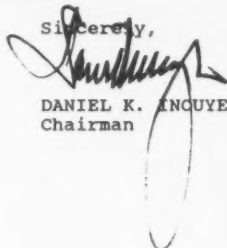
Native Hawaiian community organizations are often organized for the purpose of promoting economic development and increasing jobs in the community. Like Indian Tribes they may serve as a primary source of information and education for Native Hawaiians, especially in rural surroundings, and are a forum for mobilizing community efforts and potentially for developing business entrepreneurialship.

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Senator Bumpers

I do not believe this proposal to include Native Hawaiian community organizations in the definition of Indian Tribes will result in a significant influx of new 8(a) applications or heightened 8(a) competition. I am convinced, however, that the policy created by such a provision will serve as a positive incentive for Native Hawaiians to consider the business opportunities that would potentially become available. In this way such a policy would help to fulfill the purpose of the 8(a) program, which is to bring minority-owned businesses into the nation's economic mainstream.

Thank you for your consideration of this proposal. I will be pleased to provide you with any further information that would be helpful in addressing this matter.

Sincerely,



DANIEL K. INOUE
Chairman